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THE WHITE HOUSE

WASHINGTON

October 10, 1977

Stu
F

MEMORANDUM FOR THE PRESIDENT

FROM: Jack Watson

SUBJECT: TAX REFORM MEMORANDUM FROM PAT HARRIS

As you know, Pat Harris is meeting with you tomorrow at 2:00 p.m. to discuss the impact of certain tax reform proposals on housing programs and housing investment. In preparation for that meeting, I asked Pat to summarize her observations on the subject. Attached is a letter to you from her and a memorandum which Stu and I thought you would like to read before you have your meeting on tax reform this afternoon. Stu is in the process of analyzing Pat's points and should be prepared to comment briefly on them this afternoon.

Attachments

cc: Stuart Eizenstat

THE WHITE HOUSE
WASHINGTON
October 11, 1977

Stu Eizenstat

The attached was returned in the President's outbox. It is forwarded to you for your information.

Rick Hutcheson

RE: TAX REFORM MEMORANDUM

letter

THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D. C. 20410

OCT 7 1977

Dear Mr. President:

On October 6, I met with Mike Blumenthal to discuss the impact of certain of the Treasury's tax reform proposals on our housing programs. That impact, I believe, will be significant, immediate and damaging. In my meeting with Mike, which followed a series of meetings between our staffs, it became apparent that the issue for resolution involves not a technical dispute, but a basic conflict in national policies. Neither Treasury nor HUD is in a position to make the critical choices; the determination, we agreed, must be yours.

The basic commitment of the administration to tax reform, and to the elimination of inequities in our tax system, is one I share and support. I further support, as I indicated to Mike, many of the specific reform proposals relating to real estate. I believe, however, that the theoretical goals of reforming current depreciation provisions and modifying the taxation of thrift institutions collide with the very practical and human goals of housing policy. I am convinced that if you allow tax theory to prevail, it will be at a very great social cost.

Enclosed for your consideration is a memorandum setting forth HUD's position on each of the tax reform proposals which could affect housing. For the reasons set forth in the memorandum, I urge you to give favorable consideration to HUD's position. There are certain elements in our analysis of the relationship between tax policy and housing policy which I believe merit your particular consideration.

The Treasury proposes changes in the tax law which would substantially reduce the after-tax rate of return from housing investment. Such changes are apparently favored on the grounds that they will reduce inefficiencies and inequalities in the tax system, and "eliminate tax shelters." If true elimination of tax shelters were to be the result of the tax reform effort, I believe that housing would continue to compete successfully for equity investment. It is my understanding, however, that the

Treasury reform package contains several provisions which will continue or create tax subsidies for specific investments, such as the continued deductibility of intangible drilling expenses, partial integration of individual and corporate rates, and the investment credit for industrial structures. The reform proposals do not promote tax neutrality, but rather create a new hierarchy of tax incentives, in which certain corporate and industrial investment media are favored at the cost of housing. This is not a reform of our tax laws, but a revision of our national priorities. I urge you to consider carefully the social and political implications of these proposals.

The questions of tax policy affecting subsidized housing are different, and more difficult, ones. For reasons set forth in the memorandum, the construction of subsidized housing will virtually cease if the depreciation reforms proposed by Treasury are enacted. I do not argue that the present tax structure constitutes the ideal process of constructing housing for the poor, but I am prepared to argue that at this time it does constitute the only feasible and reliable process.

In May of 1977, the Congressional Budget Office released a study on real estate tax shelter subsidies, in which the economic impact of various changes in the current subsidy structure were analyzed. Several points made in that study should be emphasized:

(1) Of the total revenue loss projected for fiscal year 1978 from tax subsidies to real estate construction, 35 percent will result from construction of commercial buildings, and 54 percent will result from construction of middle and upper income rental housing. Only 11 percent of this tax expenditure arises from construction of low income rental housing. A very significant reduction in real estate tax shelters, and in the revenue loss arising therefrom, can therefore be achieved without sacrificing our low, moderate and middle income housing programs.

(2) The study suggests that the reduction in the tax subsidy to commercial office buildings, shopping centers, and luxury rental housing may be offset by higher rents, or outweighed by appreciation in value. In the case of low, moderate and middle income rental housing, the prospect of rental increases is not practical or desirable. There is no other economic incentive to replace the current tax subsidy, and consequently no economic basis for construction

of subsidized housing in the absence of present tax incentives. As the CBO study found: ".... tax shelter subsidies must normally be combined with other direct grant and loan subsidies before any significant amount of new construction will be undertaken at all. Removal or reduction of any one of the subsidies could make new construction of this form of rental housing uneconomical."

The Treasury has argued that because tax shelters are an imperfect means of encouraging construction, they should be eliminated, and a direct subsidy program enacted. This theory might have surface appeal, but it ignores the practical operation of our political and economic system. Even if an efficient direct subsidy program could be worked out, and even if it could be enacted as proposed, and even if it could be adequately funded, uncertainties as to the continuation of the program from year to year might significantly affect the level of activity in an industry in which financial commitments must be made several years in advance of construction.

I appreciate the cooperation that Mike Blumenthal and his staff at Treasury have afforded HUD, and I sympathize with their overall goals. I ask you, however, not to let the tax policies and investment incentives they propose override our social mandate for decent housing for all citizens. The theories of tax reform can cripple our very real and very necessary housing program.

Respectfully,

Pat

Patricia Roberts Harris

The President
The White House
Washington, D.C. 20500

Enclosure

cc: Jack Watson
Stu Eizenstat

memo

THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D. C. 20410

OCT 7 1977

MEMORANDUM FOR: The President

SUBJECT: Tax Reform Proposals

During the latter part of August, a series of meetings was held between representatives of HUD and Treasury, at which Treasury's initial tax reform proposals affecting housing were discussed. On September 6, 1977, I sent a letter to Mike Blumenthal providing him with HUD's response to these proposals. On September 17, 1977, HUD was advised of certain revisions which had been made in response to my letter. The purpose of this memorandum is to comment on the tax reform proposals, recently forwarded to you, as they relate to housing policy.

As you know, I share your commitment to tax reform, and to the elimination of the inequities which characterize our tax system. I agree that tax reform is vital to the improved efficiency of our economy and to our people's perception of their government. This Department will not defend the status quo to protect vested interests which benefit from existing arrangements. We do, however, take seriously our mission to stimulate the provision by the private sector of decent housing for middle, moderate and low income persons.

I fully support the following Treasury recommendations:

1. limitation on the deduction of mortgage interest;

2. elimination of the preferential rate of tax on gain on sale of real property; and

3. elimination of the exemption from tax on gain from sale of residential property with a value of $75,000 or less.

Moreover, in reliance on certain assurances by Treasury that it will not limit tax-exempt financing currently authorized by Section 11(b) of the Housing Act of 1937, I support Treasury's proposal to repeal Section 11(b) and substitute a new Section 103 in the I.R.C.

Certain tax reform proposals, however, are likely either to decrease substantially or to halt the construction and substantial rehabilitation of both subsidized and unsubsidized multifamily housing.

I. Proposals Related Primarily to Non-Subsidized Housing

A. Initial Treasury Proposal - Treasury initially proposed an immediate limitation of depreciation on all structures to the straight line method, with a further provision that the total amount of depreciation claimed could never exceed the owner's equity in a building. Tables based on actual decline in value of categories of buildings would be published within three years, and depreciation would thereafter be determined pursuant to these tables.

B. HUD Response - The proposed changes in the tax law would substantially reduce the rate of return from investment in housing. If such a decline in the return from housing investments were reflective of a general increase in the taxation of all capital, housing might be able to continue to compete in the equity markets for investment capital.

It was HUD's understanding, however, that there were several proposals under consideration which would continue or create tax-favored investment opportunities, e.g., continued deductibility of intangible drilling expenses, investment credits for industrial structures, and, possibly, even more rapid write-offs for machinery and equipment.

HUD expressed its concern that tax shelters would continue to proliferate, offering favorable tax treatment to investors in oil and gas, or to taxpayers or businesses engaged in the construction of industrial structures. The change in the depreciation rules affecting housing, when coupled with the proposed reduction in the tax on corporate and industrial investment and the continuation or expansion of other shelters, would cause a flow of capital from housing to other industrial and corporate investment media. In HUD's view, such a redeployment of capital would (1) slow down or reverse the recovery in multifamily construction starts at a time of increasing shortage of multifamily units; (2) cause dislocation in the construction industry, and result in unemployment in the construction trades, particularly among unskilled workers; and (3) violate the Administration's commitment to social justice.

C. Revised Treasury Proposal - Treasury agreed (1) to delay implementation of the proposed changes for three years, and (2) to permit housing to be depreciated under the 150 percent declining balance method, subject to limitations to be set out in the proposed tables.

D. Recommendations - These revisions to the proposal do not respond adequately to the points raised by HUD. Although the allowance of the 150 percent declining balance method may be desirable, this slight change does not significantly remedy the general effect of Treasury's proposal, which would be a shift of capital from housing to other investment media. Moreover, the offer to delay implementation of the proposed changes for three years is of little consequence because of the long lead time involved in the construction of housing. Accordingly, we suggest that consideration be given to a proposal that would provide for greater equality of treatment between housing and other investment media.

II. Proposals Relating Primarily to Subsidized Housing

A. Initial Treasury Proposal - Treasury never revealed a specific proposal for subsidized housing, other than to say that tax incentives for investment in subsidized housing would be restricted, but not so severely as those relating to non-subsidized housing.

B. HUD Response - HUD's position was that changes such as those proposed for non-subsidized housing would not be appropriate for subsidized housing. First, the proposed system would give no weight to the compelling social policy considerations which support favorable tax treatment for subsidized housing. Second, the economic assumptions underlying Treasury's proposal do not relate properly to subsidized housing.

The theory behind the proposal to limit depreciation seems to take into account two factors generally present in real estate investment: the projection of continuing cash flow and the expectation of capital appreciation. In most real estate ventures, these factors are, in large part, determinative of value, and provide an incentive for investment and maintenance, assuming that other areas of investment are not given greater tax preferences.

Subsidized housing, however, provides no incentive for investment in either of these two respects. First, little or no positive cash flow can be projected. The tenuous financial status of the tenants and the management problems inherent in dealing with large families requiring special attention to social needs combine to eliminate any expectation of cash yield. Second, because of the use to which subsidized housing is put and, very often, its location, there is little prospect of capital appreciation. The proposals under consideration, therefore, appear to be based upon economic assumptions which, while perhaps appropriate for most real estate investments, are not really applicable to subsidized housing.

C. Revised Treasury Proposal - Treasury proposed a delay in the effective date of any new restrictions relating to subsidized housing until 1981. There is, to my knowledge, still no clear indication as to the nature of the restrictions thereafter.

D. Recommendation: I am convinced that construction of profit-motivated privately owned subsidized housing will virtually cease if present proposals for limiting accelerated depreciation are enacted. Moreover, since the pre-construction phase of housing, including acquisition of site options, soil testing, zoning approval and state, local and HUD approvals, often takes in excess of three years, uncertainty as to financial projections would be devastating to housing. Thus, the Treasury proposals even with a three-year delay would result in an immediate termination of planning for future construction of subsidized housing.

I therefore request that subsidized housing be excluded from the proposed limitations on depreciation. To the extent that some change in the nature of the tax incentives currently available to subsidized housing may be appropriate, such change should be specifically considered by HUD and Treasury, and an effort should be made to develop proposals which are directly responsive to the particular nature of subsidized housing, rather than to the general nature of real estate investment.

III. Taxation of Financial Institutions

A. Initial Treasury Proposal - Under current law, qualifying thrift institutions which invest at least 82 percent of their assets in residential mortgages and similar or related property are entitled to an arbitrary "bad debt" deduction of 40 percent of their net income. Treasury proposes to reduce this deduction, over a five-year period, to 20 percent.

B. HUD Response - In my letter of September 6, 1977, I stated that reduction of the tax subsidy to thrift institutions would reduce their incentive to invest in residential mortgages. One result of this would be a shift in investment by thrift institutions from residential mortgages to tax exempt bonds.

C. Revised Treasury Proposal - On September 17, 1977, Treasury responded to HUD's position by noting that passage of a companion tax reform proposal, the taxable bond option, would have an impact on the relative competitiveness of residential mortgages in thrift institutions' portfolios. Treasury stated that if the taxable bond option interest subsidy were increased to 40 percent, the price differential between tax exempt bonds and taxable bonds would likewise be 40 percent. According to Treasury, the marginal rate of tax on thrift institutions would still be less than 40 percent, and thrift institutions would therefore not redeploy their capital from residential mortgages to tax exempt bonds.

Based upon the foregoing argument, Treasury declined to alter its initial proposal for changes in the taxation of thrift institutions.

D. Recommendation: The Treasury proposal would effect a major change in the taxation of the thrift institutions which currently provide the bulk of funds used for residential mortgages. The argument that changing the taxable bond option subsidy to 40 percent would make tax exempt bonds unattractive is not responsive to the basic issue raised by HUD. Moreover, it is speculative at best, since the analysis is based both on a tax change not yet enacted, and a theoretical prediction of the changes on a complex financial market.

The consequences of this proposed change have not been adequately analyzed. It is entirely possible that such a change would lead to severe dislocations in the housing industry, with adverse effects upon the economy in general. No change should be made in the taxation of thrift institutions until a complete study has been made of the effect of such a change upon the housing market and upon the nation's overall economic posture.

IV. Investment Tax Credit

A. Treasury Proposal - I understand that the tax reform package may also include a proposal to (1) continue the investment tax credit; (2) expand it to include not only machinery and equipment, as it now does, but plant investments as well; and (3) set the investment credit rate at a flat 13% rate the first year, declining over a period of years to 10%, which would be the permanent rate.

B. HUD Recommendation: Tax provisions which treat industrial investment in different locations equally have had a strikingly biased effect against older urban areas in favor of outlying developing areas. Most business investments eligible for the investment tax credit are undertaken in suburbs, where business is expanding rapidly. The less prosperous firms which remain in central cities are unable to undertake equivalent investment, and consequently are not able to take advantage of equivalent tax benefits. Increasing the current flat-rate investment tax credit on machinery will exacerbate this bias. Extending the flat-rate tax credit to plant construction as well as machinery will encourage businesses to leave older buildings in cities for new plants in suburbs.

The investment tax credit can be an effective tool for encouraging private investment. I propose that we use the tax credit to encourage investment in troubled older cities.

I strongly recommend that the investment tax credit be modified to provide an increased credit for investment in areas experiencing severe economic distress. I propose a differential of between six and ten percentage points, an amount which would channel significant new investment and job opportunities into these areas.

V. Summary

As I suggested in my covering letter, certain of the Treasury's proposals, reflecting valid considerations of tax policy, conflict directly and significantly with our national social policy. I ask you to view the proposals in that light, and to weigh any theoretical improvements to our tax system against the direct, immediate and adverse effects of such proposals upon our housing program.

Pat

Patricia Roberts Harris

cc: Jack Watson
Stu Eizenstat

2:00 PM

THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D. C. 20410

October 7, 1977

MEMORANDUM FOR: The President

SUBJECT: Using the Investment Tax Credit to Assist Economically Distressed Areas

We would like to urge strongly that the proposed tax reform package be amended to provide a geographical targeting of the investment tax credit. As it is presently set forth in the draft legislation, it gives the same benefit to businesses wherever they expand or relocate. To continue this approach is to continue to encourage the flow of investment and jobs from the areas of our country in greatest need.

The continuing economic stagnation and deterioration of many urban and rural areas is perhaps one of the greatest challenges of this Administration. Even in a period of increasing prosperity, certain areas still suffer the effects of high unemployment and faltering economies, losing economic development opportunities to more prosperous, developing areas.

We believe that the investment tax credit has proved itself an effective tool for encouraging private investment, and that it should be used to encourage investment in these economically distressed areas. We recommend that the investment tax credit be modified to provide a higher, differential rate of credit for investment in jurisdictions experiencing severe economic distress. Similar locational preferences for urban and rural areas were considered by Congress in 1967, 1969 and 1971.

A differential investment credit would be a significant Federal commitment to the economic health of many troubled urban and rural areas, and would provide an important link in the public-private partnership necessary for economic development.

Secretary of Agriculture

Secretary of Housing and
Urban Development

THE WHITE HOUSE
WASHINGTON
October 10, 1977

The Vice President
Stu Eizenstat
Jack Watson
Charles Schultze

The attached will be submitted to the President. This copy is forwarded to you for your information.

Rick Hutcheson

USING THE INVESTMENT TAX CREDIT TO
ASSIST ECONOMICALLY DISTRESSED AREAS

THE WHITE HOUSE
WASHINGTON

October 11, 1977

Stu Eizenstat

The attached was returned in the President's outbox. It is forwarded to you for appropriate handling.

Rick Hutcheson

RE: COMPREHENSIVE AGRICULTURAL INSURANCE PROPOSAL

THE WHITE HOUSE
WASHINGTON

	FOR STAFFING
	FOR INFORMATION
/	FROM PRESIDENT'S OUTBOX
	LOG IN/TO PRESIDENT TODAY
	IMMEDIATE TURNAROUND

ACTION	FYI	
		MONDALE
		COSTANZA
/		EIZENSTAT
		JORDAN
		LIPSHUTZ
		MOORE
		POWELL
		WATSON
		LANCE
		SCHULTZE

	ENROLLED BILL
	AGENCY REPORT
	CAB DECISION
	EXECUTIVE ORDER

Comments due to Carp/Huron within 48 hours; due to Staff Secretary next day

		ARAGON
		BOURNE
		BRZEZINSKI
		BUTLER
		CARP
		H. CARTER
		CLOUGH
		FALLOWS
		FIRST LADY
		HARDEN
		HUTCHESON
		JAGODA
		KING

		KRAFT
		LINDER
		MITCHELL
		MOE
		PETERSON
		PETTIGREW
		POSTON
		PRESS
		SCHLESINGER
		SCHNEIDERS
		STRAUSS
		VOORDE
		WARREN

Stu -
I'm concerned about
a) burgeoning costs &
b) pressure to help non-
insured farmers if
disaster occurs.
c) Administration & individual farmer claims (100's & 1000's) etc
J

THE WHITE HOUSE

WASHINGTON

October 8, 1977

MEMORANDUM FOR: THE PRESIDENT

FROM: STU EIZENSTAT Stu
LYNN DAFT LD

SUBJECT: Comprehensive Agricultural Insurance Proposal

In the attached memorandum, Secretary Bergland outlines a proposal that would replace several existing agricultural disaster grant and loan programs with a single all-risk insurance program that would be available nationwide. The Secretary is scheduled to testify before a Subcommittee of the House Agriculture Committee within the next few days to discuss the Administration's position.

Background

Agricultural producers are protected against financial hardships resulting from natural risks to production through a number of Federal programs. They include:

- The Disaster Payment Program authorized by the farm legislation you recently signed.
- The Federal Crop Insurance program.
- The Farmers Home Administration Emergency Loan Program.
- The Small Business Administration Disaster Loan Program.
- The Emergency Livestock Feed Assistance program.
- The Emergency Hay Transportation Assistance program.
- The Emergency Livestock Loan program.
- The Dairy Indemnity program.

- o The Beekeeper Indemnity program.

Each of these programs addresses a part of the overall problem of natural risk to agriculture; none addresses the problem comprehensively. Each program has its own eligibility requirements, its own administrative regulations, and its own means of program delivery. At least four separate agencies are involved. Not surprisingly, there are conflicts and contradictions among these programs. Secretary Bergland's proposal is offered as a first step toward the consolidation and rationalization of these authorities.

There is general agreement that the agricultural disaster relief authorities are in need of reform. We sought and obtained some changes in the disaster payments program as part of the Food and Agriculture Act of 1977. However, these provisions were authorized for only two years (compared to four years for most other provisions in the bill), with the understanding that replacement legislation would be enacted prior to their expiration.

The situation is further complicated by two other legislative developments. One was the expiration on September 30th of most of the temporary drought assistance authorities that were enacted in response to our request of last March. We are recommending in a separate memorandum that we use ongoing programs to provide drought assistance rather than seek extensions of the temporary authorities. All the affected agencies are in agreement with this course of action. Members of Congress and State governments, while wanting reassurance that the Federal Government will continue to provide aid, seem also to recognize the need for placing primary emphasis on making the permanent authorities more responsive while discontinuing the use of temporary measures.

The second legislative complication concerns the SBA disaster loan program. As a result of an amendment to the SBA program authorizing loans to farmers (sponsored by Congressman Neal Smith), SBA has been flooded with applications for 3% drought loans. You recently authorized OMB to notify the Congress that a budget supplemental (increasing the authorization from $725 million to $1.4 billion) will probably be required just to keep the program operational through next January. Much of this activity is due to the more liberal terms of the SBA loans in comparison with those available from the Farmers Home Administration, the traditional farm credit source of last resort. Beyond the problems of higher budget cost

and the inconsistencies between programs, there has been widespread confusion at the local level since the SBA delivery system is poorly prepared for the task.

We have asked Secretary Bergland, in consultation with Administrator Weaver, to explore opportunities for correcting this problem with key members of Congress, including Neal Smith, Chairman of the House Small Business Committee.

The USDA Proposal

Under the proposed program, individual producers would be offered an opportunity to purchase protection against all natural risks to their crops and, eventually, livestock. The emphasis would be on the coverage of extreme losses.

Initially, the proposed program would apply to 23 major crops. The 23 crops are: apples, barley, dry beans, citrus, combined crops, corn, cotton, flax, grain sorghum, grapes, oats, peas, peaches, peanuts, raisins, rice, soybeans, sugar beets, sugar cane, sunflowers, tobacco, tomatoes, and wheat. Later, following the development and testing of proper actuarial bases, the coverage would be broadened to include other crops and livestock. Producers would be offered three alternative levels of protection geared to cost-of-production: (a) variable costs, (b) variable costs plus machinery and some overhead costs or (c) variable costs plus machinery and overhead costs plus a return to land and management. The USDA proposes to subsidize the premiums for (a) and (b) level protection with the (c) level to be self-financing. The USDA estimates that 90 percent of the subsidy would go for (a) level protection and 10 percent to (b) level. They further estimate that this subsidy would be equal to about 53 percent of the (a) level premium and 14 percent of the (b) level premium.

As proposed by the USDA, the new program would initially replace the Disaster Payment Program and the Federal Crop Insurance Program in their entirety and those parts of the Farmers Home Administration and Small Business Administration loan programs that cover crop losses. The authorities to be replaced now cost about $545 million. The new program would cost an estimated $500 million annually -- though the year-to-year variation could be extremely high, ranging from $200 million to in excess of $1 billion.

After sufficient information is collected to develop a proper actuarial bases for other crops and livestock, other existing programs would also be replaced. The USDA estimates that a livestock program costing $200 to $300 million could be operational in about five years, although the net cost would be less since certain existing programs would be eliminated.

Issues and Options

There are two major issues and one of somewhat lesser consequence. The major issues are these:

1. What level of Federal subsidy should be provided? The USDA argues that a subsidy roughly equivalent to our present level of expenditure (about $500 million) is required. In the judgment of the USDA, a subsidy of this magnitude is required for two reasons: (a) to attract significant participation in the program and (b) because a lower level of subsidy is not politically acceptable. OMB feels that the recently signed farm bill provides ample protection against economic risks and, therefore, that no subsidy is necessary. If a subsidy is provided, OMB believes it should be limited to administrative expenses (about $100 million) or to the cost of reinsurance, if that approach is adopted (see next issue). CEA and Treasury generally support an overhaul of the current disaster programs and have no objection to a level of subsidy that is not in excess of the cost of the current programs. The Domestic Policy Staff also supports a level of federal subsidy up to the current level of program cost. We doubt that a significantly lower level of subsidy is feasible, largely for the reasons given by the USDA. Participation in the FCIC program, which has a subsidy of about 20 percent, has always been low. . .around 17 percent of eligible acreage. We do not know the extent to which other forms of aid (e.g., disaster payments, low interest loans, etc.) have discouraged participation in the FCIC program. However, the Canadian experience suggests that a combination of a single form of risk protection (crop insurance) and a relatively high subsidy (70 percent) can result in a high rate of participation (about 80 percent in the Western Provinces of Canada). And, though the farm program provides significant protection against falling market prices, with the exception of the disaster payments provision (which this proposal would replace), it provides comparatively little protection against outright crop failure.

Despite our support of a level of subsidy up to around $500 million, we are not satisfied that the rationale for choosing among the various alternative levels has been adequately evaluated. As the USDA memorandum notes, the proposed program would result in a substantial shift of benefits away from those producers who are now eligible for disaster payments in favor of producers of other commodities. Given this, it is not clear to us what the economic grounds are for choosing $500 million versus, say $300 million or $700 million.

Decision

_____ Up to $500 million (USDA, Treasury, CEA, DPS)

_____ No subsidy (OMB 1st choice)

_____ Administrative expenses about $100 million (OMB 2nd choice)

_____ Other

2. Should private industry be involved in the delivery of the program? The USDA recommends a totally Federal program, arguing that the private sector has never shown much interest in providing all-risk insurance to farmers and that a privately operated program would cost more, perhaps as much as 35 to 40 percent more. OMB favors a more prominent role for the private sector. They argue that private insurance companies have voiced interest in a reinsurance program and that a larger private sector role would help hold down Federal employment and would generally lessen the Federal presence within local communities. In their FY1979 budget submission, FCIC has asked for an additional 200 full-time positions and 1,000 part-time positions, in anticipation of enactment of the USDA proposal. The Domestic Policy Staff feels that the opportunity for private sector involvement merits further evaluation. There are a host of additional questions to be answered, including a detailed assessment of alternative program costs, personnel requirements, and program delivery effectiveness. Perhaps a privately-run reinsurance program should be tested on a pilot basis. Inasmuch as the Congress will not be passing legislation on this topic in the current session, we see no reason to commit the Administration at this time to a position that has not been thoroughly examined.

Decision

_____ Federally-run (USDA)

_____ Reinsurance of private company sales (OMB)

_✓_ Keep our options open, pending further evaluation of the use of the private sector (DPS)

A final issue of somewhat lesser importance is the following:

3. Do we commit now to provide all-risk insurance protection for all crops and livestock products or do we commit to provide such protection for a more selective list of crops and to explore the feasibility of extending this protection to as many other crops and livestock products as possible? The USDA proposal would immediately apply to the 23 crops now covered under FCIC and would be extended to other crops and livestock as soon as proper acturarial bases are developed and tested. OMB would limit this commitment to the 23 crops currently insured and to assessing the feasibility of extending the coverage to other crops and livestock. The Domestic Policy Staff favors the OMB position.

Decision

_____ Commit to 23 crops now and other crops and livestock when acturarial bases developed (USDA)

_____ Commit to 23 crops now and indicate intention to extend to other crops and livestock, pending results of feasibility analyses (OMB, DPS)

DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D. C. 20250

September 26, 1977

MEMORANDUM FOR THE PRESIDENT

SUBJECT: All-Risk Insurance for Crops and Livestock

Our disaster programs are a disaster. I propose that we support Congressional efforts to replace crop and livestock disaster programs with a nationwide all-risk insurance program. The program I favor would initially cover the 23 crops now insured on a limited basis under the Federal Crop Insurance Program. After a proper actuarial base has been developed and tested, the other crops and livestock would be insured.

An insurance program similar to the one I am proposing would be authorized under H.R. 7111, a bill known as the Farm Production Protection Act, now under consideration. I am expected to testify on this bill early in October.

The expanded all-risk crop insurance program would be built upon forty years of experience with federal crop insurance. But for any crop insurance program to be successful, the disaster payments program, which is extended for two years in the "farm bill," and low interest loans for crop losses now provided under Farmers Home and Small Business authorities, would have to be replaced.

These programs, which I propose to be replaced by the new insurance program, require budget outlays of about $545 million a year on the average. The range in expected outlays, a function of the weather, is from about $200 million to $1.0 billion.

The current disaster payments program accounts for some $450 million per year, and only six crops are covered. I propose that we use these funds to share the cost of an adequate crop insurance program with the producer. The 23-crop program I submit for your consideration is expected to cost about $500 million a year on the average. Producers of the six crops now eligible for disaster payments would have a smaller subsidy but others would receive more. The proposed program would be more equitable; it would provide all producers the opportunity to protect themselves against a higher degree of risk at a reasonable cost.

A number of alternative crop and livestock insurance programs have been analyzed and carefully reviewed by Domestic Council, OMB, CEA and Treasury staff.

Most but not all agree with my proposition to subsidize insurance premiums. Based on our experience with crop insurance and on the political realities, there appears to be no choice but to do so. The relevant question is the magnitude of the subsidy. Our experience with federal crop insurance suggests that a sizable subsidy is required to encourage participation. The present program has a 20 percent subsidy and only 17 percent of the eligible acreage is insured.

Private insurance firms have tried to offer all-risk crop insurance, but have been unable to make it a financial success. Hail insurance is the one exception to this general statement. In part, the reason these efforts have been relatively unsuccessful is the tendency of the Congress to provide protection against natural disaster at little or no cost to the producer. In consequence, neither producers nor members of Congress will accept an insurance program that is fully self-financing. A self-financing insurance program will fail, because something producers now have at zero or near zero cost would be taken away, and the Congress will not accept this.

As soon as actuarial bases can be established, we plan to phase out a number of smaller non-crop risk protection programs. These include Cattle Transportation Assistance, Emergency Livestock Feed and Hay Transportation, Dairy and Beekeeper Indemnity, and Livestock Emergency Loan programs. These now cost USDA about $25 to $50 million per year. The emergency feed program for livestock, which will transfer from the Federal Disaster Assistance Administration (HUD) to USDA with the signing of the "farm bill," has cost almost $100 million this fiscal year due to drought conditions.

This new insurance program would not, however, phase out some disaster programs. Those remaining would continue to cover land and building damage, flood damage to farms and communities, and small business losses. The proposed insurance program would complement the loan and target price provisions in the "farm bill," which provide protection against an economic disaster, the consequence of an excess supply. It does not, however, provide adequate protection for the producer who has a bad crop or none at all.

Disaster payments for crop losses in the "farm bill" provide protection at no cost to the producer for a maximum of 30 percent of average production if he has no crop at all, less if he has some crop. This is insufficient to provide for even variable costs, which tend to range from 40 to 70 percent of the yield, depending upon the type of crop. Furthermore, the disaster payment program, as I mentioned earlier, covers only six major crops which constitute about two-thirds of the value of all crop production. The others are not covered at all. Also, eligibility for price support loans is of little comfort to a farmer with no crop.

Target price deficiency payments nonetheless provide some protection when market prices are low. In the case of wheat, the maximum protection this affords for a farmer with no crop is about 25 percent of his costs; in the case of corn, it is only about 5 percent. Cotton, rice and other feed grains are in between. But, in situations where the market price is above the target price, as could be the case in the event of widespread crop failures, most producers of major crops would get little or no income protection from this device. Our insurance proposal would provide the primary missing link in establishing income support.

The proposed insurance program would cause substantial shifts in Federal benefits. Those currently protected by the $450 million of disaster payments in the "farm bill" (about two-thirds of the value of crop production) would have to pay more for the benefits they would receive. Other crop producers would be extended higher benefits. Those now protected under the Crop Insurance program, who produce about 18 percent of national production, would have their subsidy approximately doubled from the current average level of roughly 20 percent. In addition, there would be an adjustment in the present inequities for the currently insured. The program also would terminate both administrative and legislative abuses of the Emergency Crop loan program, with its frequently generous forgiveness features and low interest rates.

The Proposal

The basic objective of the USDA proposal is to provide individual producers with the opportunity to purchase protection against all natural risks potentially threatening their crops, livestock, and other farm production--with emphasis on coverage for extreme losses.

As previously indicated, the program would be made available in all counties in the U.S. where agricultural commodities are produced. It would be extended as rapidly as possible to the 23 major crops for all risks for which actuarial data is available. Minor crops and livestock would initially be included on a pilot basis until an adequate actuarial base could be established.

In the case of crops, the individual producer would be offered three levels of protection which are related to cost of production: "A" would cover out-of-pocket (variable) production costs; "B" would cover "A" costs plus machinery investment and some overhead; and "C" would cover "A" and "B" costs plus a return to land and management.

The premium structure is designed to be related to the risk at each level, so as to have a neutral impact on the structure of farms; it would not favor high or low-risk areas. Premiums would be based to the extent possible on individual farm risk. The producer, in selecting his coverage, would be given a choice of unit value of the crop in several increments up to the target price or expected market price, as the case may be. The premiums would be adjusted accordingly.

About 90 percent of the Federal subsidy of $500 million would be distributed to cover variable or out-of-pocket production costs--the most vulnerable aspect of production. The remaining 10 percent would be allocated to "B" costs, mainly for young farmers and others who are likely to have a limited equity in their machinery and other capital investments.

Based upon our estimates, the government would be paying about 52 percent of the "A" premium, 14 percent of the "B" premium, and none of the "C" premium.

The premium structure would not allow any discounts on premiums for large farmers, for particular crops, or for any purpose that would disrupt the intent of the program. However, some discounts with neutral impact would be permitted to the extent that these substituted effectively for marketing costs that are essential to the efficient operation of the program.

The following table provides some of the basic data related to the premium structure and to estimated participation.

Item	Level of risk covered			
	-A- Variable costs only	-B- A plus machinery and overhead	-C- A plus B plus land and management	Maximum or total
% of average yield	50	70	90	---
Max. liability ($ Bil.) 1/	18.0	25.5	33.0	---
Average pay-off	5.7	7.5	10.5	---
% participation 2/	38	24	6	68
Liability ($ Mil.) 3/	6.8	6.1	2.0	14.9
Indemnity ($ Mil.)	390	459	208	1,057
Risk premium ($ Mil.)	390	459	209	1,057
Admin. premium ($ Mil.)	48	43	14	105
Total premium ($ Mil.)	438	502	222	1,162
Subsidy	250	4/200	4/50	500
Subsidy as % of premium	57	40	22	43
Loss ratio	2.08	1.52	1.21	1.60
Premium per $100 liab.	2.75	4.93	8.68	4.43

1/ This would be the maximum liability if there were 100 percent participation in each category with none in the others.
2/ Based on % of total crop acreage.
3/ Assumes that producers will select, on the average, the market price.
4/ Subsidy applied to A and B levels only.

The program would be operated largely through the combined field facilities of the current ASCS and FCIC programs. The major increase in staff would be for claim adjustment. Additional personnel would be hired or contracted on a temporary basis as needed. The total administrative costs would run about $105 million, including claims servicing and promotion costs.

The financing of the program would be achieved through the $14.5 billion borrowing authority of the Commodity Credit Corporation. This would allow the flexibility needed to fund the highly variable annual costs. Any losses to the Corporation would subsequently be recovered through the appropriations process in a manner similar to that in which net realized losses are now recovered for the domestic commodity programs. An amendment to the CCC Charter Act would be required.

Some Concerns

Consideration of the impact of the proposal on the private insurance industry has been a major factor in developing it. We feel that this is not a serious problem. In the past, the private sector has shown little interest in providing all-risk crop protection for farmers. Their efforts have been limited primarily to hail coverage. We have consulted with private industry leaders; they indicate that they would have to add about 35 to 40 percent to the cost of a Federal program to cover their costs and profits. This would not generate sufficient participation (about 10 percent) to make it a viable enterprise for them.

The proposal would, however, on a limited basis compete with private hail insurance. Our experience with the current limited crop insurance program shows, though, that since 1938 only about 13 percent of all-risk losses have been caused by hail. But even here the Department's program would compete little with private industry for the first 30 percent of hail losses. There would, nonetheless, be substantial competition in the 30 to 50 percent range, or higher, of hail losses.

A major weakness in our estimates is the rate of participation at alternative levels of subsidy. The current insurance program has a 17 percent participation rate with a 20 percent subsidy of risk premium and administrative costs. A few years ago, Canada introduced an all-risk crop insurance program which in a short time increased to an 80 percent participation rate with a subsidy close to 70 percent. This applies mostly to the Western Provinces where wheat and other small grains predominate. If our participation rate of 68 percent with a 43 percent level of subsidy is exaggerated, the total cost of the program would be, accordingly, less than $500 million per year. On the other hand, if it is underestimated, the cost could well exceed that figure. An error in the participation rate of 10 percent would increase or decrease average annual costs by $125 to $160 million.

An important factor in the Canadian experience is that the Government offers virtually no other form of disaster relief for crop producers. It is important that other forms of natural disaster assistance be eliminated if this proposal is adopted.

Some Options

The major options that have been considered for the crop portion of this program relate to the total level of subsidy. Assuming all other operational factors similar to the proposal, the results are expected to be:

Total subsidy	Subsidy as a % of premiums	Participation rate (%)
None	0	10
$300 million	33	52
$500 million	43	68
$750 million	52	84

The $750 million level could be justified on the basis that the current set of programs covers about two-thirds of the value of U.S. crops at a cost of about $500 million. If this is justified, then covering the additional crops with an additional $250 million would also be justified.

Our current estimates make no allowance for livestock and other agricultural production, except on a pilot basis. We are not in a position at this time to make reliable estimates of such costs since we do not know how such a program should be operated. A rough estimate suggests that a livestock program could absorb some $200 to $300 million in about 5 years.

Another set of options we have considered is to apply a subsidy only to the "A" level of coverage which represents variable costs of production. We would still offer "B" and "C" coverages, but the producer would pay all costs associated with the higher coverage. This would, we believe, obtain the following results:

Subsidy as a % of premium on -A- coverage	Participation rate (%)	Total cost ($ Mil.)
0	10	0
20	35	140
40	63	345
60	89	920
80	94	1,880

Expansion and adjustment for the inequities in the current insurance program would also meet the objectives of such a program. However, the

costs and the difficulty of obtaining such amendments would, in effect, be the same as under the foregoing options if the current objectives are to be met.

BOB BERGLAND
Secretary

THE WHITE HOUSE
WASHINGTON

October 10, 1977

The Vice President
Frank Moore
Jack Watson
Jim McIntyre
Charles Schultze

The attached will be submitted to the President today. This copy is sent to you for your information.

Rick Hutcheson

COMPREHENSIVE AGRICULTURAL INSURANCE PROPOSAL

THE WHITE HOUSE
WASHINGTON

October 11, 1977

Charles Schultze

The attached was returned in the President's outbox. It is forwarded to you for appropriate handling.

Rick Hutcheson

RE: ECONOMIC IMPACT ANALYSIS

cc: The Vice President
Stu Eizenstat
Jack Watson
Jim McIntyre

THE WHITE HOUSE
WASHINGTON

	FOR STAFFING
	FOR INFORMATION
/	FROM PRESIDENT'S OUTBOX
	LOG IN/TO PRESIDENT TODAY
	IMMEDIATE TURNAROUND

Schultze memo only

ACTION	FYI	
	/	MONDALE
		COSTANZA
	/	EIZENSTAT
		JORDAN
		LIPSHUTZ
		MOORE
		POWELL
	/	WATSON
	/	LANCE
/		SCHULTZE

	ENROLLED BILL
	AGENCY REPORT
	CAB DECISION
	EXECUTIVE ORDER

Comments due to Carp/Huron within 48 hours; due to Staff Secretary next day

		ARAGON
		BOURNE
		BRZEZINSKI
		BUTLER
		CARP
		H. CARTER
		CLOUGH
		FALLOWS
		FIRST LADY
		HARDEN
		HUTCHESON
		JAGODA
		KING

		KRAFT
		LINDER
		MITCHELL
		MOE
		PETERSON
		PETTIGREW
		POSTON
		PRESS
		SCHLESINGER
		SCHNEIDERS
		STRAUSS
		VOORDE
		WARREN

THE CHAIRMAN OF THE
COUNCIL OF ECONOMIC ADVISERS
WASHINGTON

Charlie - Oh, but see note to J

October 7, 1977

MEMORANDUM FOR THE PRESIDENT

FROM: Charlie Schultze CLS

Subject: Economic Impact Analysis

Last March, and again in your Anti-Inflation Message, you endorsed the broad outlines of a program to review the economic impact of major proposed regulations, and directed your advisers to develop final proposals for such a program. This memo describes the program developed by an interagency task force in response to your directive, and seeks your approval to implement it immediately.

The Regulatory Analysis Program

I recommend that this economic impact review be known as the "Regulatory Analysis Program," in order to sever any connections with the much-criticized "Economic Impact Statement Program" of the Ford Administration. In brief, the Regulatory Analysis Program would consist of the following two elements:

1. A Regulatory Analysis

Each Agency would be required to prepare a regulatory analysis for all major proposed regulations. When making a proposal the agency would also be required to state the alternatives it had considered. The regulatory analysis (RA):

-- would be brief (20 to 40 pages) 10-20 enough?

-- would be issued when the regulation is first proposed for public comment.

-- would include an evaluation of the economic impact of the proposed regulation, and of alternative regulatory approaches considered by the agency.

At the time the agency calls for public comment on the proposed regulation, it would be required to note the availability of the RA and to seek comments on both the proposed regulation and the alternative approaches considered by the agency.

2. A Review Process

An interagency group will review a small number of RA's (10 to 20) each year in order to establish standards of quality for RA's generally, and to give close Administration scrutiny to those regulations with the greatest potential economic effects. The review process will have three stages:

-- First,a deputy-level group will evaluate the RA and draft a report to their principals that discusses the adequacy of the RA and outlines the deputies' conclusions regarding the economic effects of the regulation.

-- Next, where serious disagreements among agencies exist, principals would meet informally to discuss and try to resolve those differences.

-- Finally, in a very limited number of cases of serious importance, differences may be brought to your attention for guidance.

The review group would include the major economic agencies of the Administration (Treasury, Commerce, Labor, OMB and CEA) and all non-independent regulatory agencies. An Executive Committee would be charged with selecting regulations for the group to review. The Executive Committee would include: (CEA (Chair) and OMB, plus one representative each, selected quarterly on a rotating basis, from the other economic agencies and from the regulatory agencies that are members of the Review Group. The Council on Wage and Price Stability will provide staff support to the Review Group.

Reviews will take place during the period that the Agency is collecting public comments on the proposed regulation. The Review Group will not have authority to delay or order changes in the proposed regulation. Results of the review will be placed in the record of public comments on the regulation at various stages in the review process. This will make the outcome of the review available to the public, and will keep this program in conformity with the law.

Discussion of the Proposal

The proposed procedure seems complex. It is -- but necessarily so.

First, to be successful it is essential that the regulatory agencies themselves be a part of the process. Ultimately, we want them to improve their own economic analysis. If they see this review solely as a device for Treasury, CEA, OMB, Labor and Commerce to strong-arm them on particular regulations, the system won't work.

Second, the legal procedure surrounding the rule-making process in regulatory matters made it impossible to discuss proposed regulations in an informal fashion, as we do budget requests or proposed new legislation. Various procedural rules have to be accommodated.

This program has been worked out through lengthy but, I believe, extremely productive discussions with a large number of agencies. The group that devised this program consisted of representatives from the Departments of Commerce, Labor and Treasury, and OMB, the Domestic Policy Staff, and the Council on Wage and Price Stability. Several drafts of the proposal have received extensive comment from the regulatory agencies affected by the proposal, including the Departments of Agriculture, Defense, Energy, HEW, Interior, Justice, Transportation, and the Environmental Protection Agency.

The objective of the program is to insure, to the extent possible, that Federal agencies select the most cost-effective approach to any regulatory problem. In its broad outlines, this proposal conforms to the proposal you endorsed in March. However, agency comments have caused us to modify that proposal substantially.

This proposal is an integral part of the regulatory process reforms that you already have approved. Major innovations in this process are essential if we are to introduce economic considerations into the regulation writing process. Other regulatory process reforms will exert continual pressure on agencies to consider carefully the economic consequences of their regulatory proposals. The program to review Regulatory Analyses will serve as a quality-control on the final regulatory product.

Several aspects of the program make substantial improvements over past programs to review regulations:

-- The review takes place after the regulation has been offered for public comment. Much crucial data that agencies need to make proper regulatory decisions becomes available during the public comment period. Under this review process, the Review Group will be able to take advantage of that data in making its analysis.

-- A process of peer review, through the RA Review Group has been substituted for the antagonistic and generally unproductive public filings by the Council on Wage and Price Stability under the Ford Administration Program.

-- This program has been structured to avoid delaying the regulatory process. The review must take place during the public comment period. Moreover, by requiring agencies to disclose and seek public comments on alternative regulatory approaches it will be possible under the law to make a major shift in regulatory approach in response to public comments. Unless those alternatives are listed, a change in regulatory approach would require delay for an entirely new comment period.

Several agencies have expressed reservations about the proposed program. Their principal objection is that a separate review group is unnecessary and that the review process proposed is overly formal. I have two comments:

-- The review process is essential if these economic analyses are to be meaningfully integrated into the regulation-writing process. The RA's alone will not solve our regulatory problems, but without review to enforce high standards, the analysis of economic impacts will remain a pro-forma procedure, generating paperwork but having no impact on the quality of regulations.

-- I would prefer a more informal process, but I am convinced by Justice Department arguments that a more formal procedure would violate the spirit and letter of the Administrative Procedures Act.

The structure of the review group also has been criticized for being "stacked" against the regulatory agencies. The primary concern is that the executive committee, which has as its only function the selection of RA's for review, includes three economic agencies and only one regulatory agency. A small executive group is necessary, and I believe this arrangement is fair. All regulatory agencies are full members of the review group, and may participate fully in all reviews, if they wish. I do not believe that the economic agencies can dominate this process, nor can they overrule regulatory agencies. This group has no authority to order changes in regulations.

OMB and Stu Eizenstat's staff have argued that the program may be viewed by the public as an attack by this Administration on environmental or health and safety standards. This is possible, since such reviews have been abused in the past. If we do nothing, however, there will also be objections heard from the business community. Indeed, many in Congress are eager to force on the Administration an economic impact review process that is much less attractive.

You have received comments on this program from Stu and from OMB. Most reiterate points made in this memo, and I have no objection to them. I would like to comment briefly on the concerns raised by EPA, however:

-- EPA suggests that all reviewers' comments be published. I believe this would have a chilling effect on the candor of reviews and the effectiveness of the program. I would point out, however, that this process requires that at several points during the review process statements outlining the status and findings of the review must be placed in the public record.

-- EPA proposes that of RA's reviewed each year, no more than 25 percent -- or a maximum of 5 -- should be issued by one agency. We have already agreed previously with other agencies to limit the maximum number of reviews from any one agency to four.

-- EPA asks for changes in the Group's structure. Agencies not on the Executive Committee already have full status on the review group, except for limited but rotating membership in the Executive Committee that selects RA's for review. Increasing the size of that group would add another element of unwieldiness. In view of the limited functions of the Executive Committee, such a change seems unnecessary.

This proposal has been endorsed by CEA, OMB, Treasury, Labor, Commerce, COWPS and the Domestic Policy Staff. While several regulatory agencies would prefer that there be no process to examine the economic impact of major proposed regulations, almost all agree that if such a process is to exist, this approach is acceptable and meets their most urgent concerns.

If you concur, I believe that this program should be put into effect as soon as possible. OMB will incorporate any necessary orders from you into the Executive Order it currently is preparing that implements your Regulatory Process Reforms.

Approve Program as described ✓

Do not approve_____

See me_____

If you approve of the program, language announcing your decision will be incorporated in a letter to the Cabinet and to regulatory agency heads announcing your reforms of the regulatory process and distributing an executive order implementing them. This is expected to be completed within one month.

Let's reassess after 6 months

FC

staff comments

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

INFORMATION 10 October 1977

TO: THE PRESIDENT

FROM: RICK HUTCHESON RH

SUBJECT: Staff Comments on Schultze Memo

No comments from Lipshutz, Jordan.

The Cabinet Secretary is satisfied that adequate consultation has taken place with departments and agencies. Only EPA objects (see comments, attached).

OMB concurs with the program, but points out a potential political cost: "The review of even a small number of major regulatory proposals will involve some highly contentious issues which heretofore have not been brought to the White House... (However) the system for peer-group and executive committee analysis of major regulatory analyses has been carefully designed to minimize these risks."

OMB suggests that in implementing the program, (1) the review process be kept as informal as possible; (2) 'voting' in the process be limited to selecting the 10-20 regulations to be reviewed -- not to resolve disagreements among agencies; and (3) the impression that the program is aimed at certain agencies or types of regulations must be avoided.

Eizenstat calls the CEA proposal "workable," and believes "that this proposal represents an improvement over the Ford economic impact analysis program... but if not carefully implemented, it could develop some of the same difficulties which hobbled the Ford effort," to wit:

- the required "regulatory analysis" could be a paperwork burden, written after-the-fact by agencies to defend their proposals; the "RAs" should be kept short;

- the interagency review procedure could be viewed as an EOP effort to "strong-arm" environmental, health and safety regulations; and

- the interagency review could be as contentious as the Ford procedure (the "peer review" will inevitably be conducted through leak-generated media reports) unless you occasionally emphasize your concern that the program be executed fairly.

Eizenstat recommends that you mention the program at a Cabinet meeting, and make these points, and those suggested by OMB.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

October 6, 1977

MEMORANDUM FOR THE PRESIDENT

THE ADMINISTRATOR

Subject: Ensuring Sensible Regulation

Charlie Schultze and I agree on objectives: Sensible regulation requires (1) sound economic analysis, (2) a thorough review of the alternatives to regulation before committing to it, and (3) an open, fair process.

However, I feel CEA's proposal for encouraging your regulatory agencies to meet these requirements has several weaknesses:

- o Delay. This complex process will take more than the two months allowed for public comment - much longer for the large, difficult regulations on which it will focus.

- o Political and Program Costs. The Nixon/Ford Executive Offices misused an analogous "Quality of Life Review" of EPA regulations to control/muzzle the Agency. The issue was politicized, and many environmentalists and our bureaucracy remain highly sensitive. Reintroducing too close an analogy only nine months after the old system ended will probably be misinterpreted and actually hinder reform.

I recommend several modifications to the CEA proposal:

* Provide safeguards against the worst Nixon/Ford abuses

  - Require all reviewers' comments and proposed changes to be published openly. (Otherwise the public will perceive the system as one which gives agencies "hostile" to EPA's mission special hidden influence over our decisionmaking. The suspicion, based on actual past experience, will be that EPA's true intent has been thwarted before being allowed to see the light of day.)

/ / Agree /✓/ Disagree

- Require that no more than 25 percent of all regulations reviewed be from one Agency. (Nixon/Ford used a "general" regulation review to run one Agency - EPA - in detail from the EOP.)

/__/ Agree /__/ Disagree

- Clearly state in your announcement of this program that the review period will be limited to the legal comment period (usually two months).

/__/ Agree /__/ Disagree

* Strengthen the regulatory agencies' role on the governing executive committee

- 2 of 5 members, not 1 of 4

- Observer status for non-voting agencies

Increases regulatory agencies' commitment to the process

/__/ Agree /__/ Disagree

Further, I recommend that you ask CEA (1) to review the quality of each agency's regulatory process and its use of economic analysis every year or two and (2) to exempt agencies that are doing exceptionally good jobs from the formal external review CEA is now proposing. Doing so will provide the line agencies a very powerful incentive to make the basic changes lasting improvement will require.

/__/ Agree /__/ Disagree

Douglas M. Costle

THE WHITE HOUSE

WASHINGTON

Date: September 23, 1977

MEMORANDUM

FOR ACTION:
Stu Eizenstat obtained
Hamilton Jordan nc
Robert Lipshutz nc
Frank Moore - attached
Jack Watson - attached
Jim McIntyre - attached

FOR INFORMATION:
Vice President Mondale
Jody Powell

Doug Costle with comment - Thurs

SE comment?

Si working w/OMB exp 2 9 a

FROM: Rick Hutcheson, Staff Secretary

SUBJECT: Economic Impact Analysis

YOUR RESPONSE MUST BE DELIVERED TO THE STAFF SECRETARY BY:

TIME: 12:00 Noon

DAY: Monday

DATE: September 26, 1977

ACTION REQUESTED:

_x_ Your comments

Other:

Costle wants to see

STAFF RESPONSE:

____ I concur. ____ No comment.

Please note other comments below:

2:30p - Thursday ok for Costle's signature

Exp by 4:30p

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately. (Telephone, 7052)

THE WHITE HOUSE

WASHINGTON

MEMORANDUM TO: THE PRESIDENT

FROM: Jack Watson
Jane Frank Jane

October 6, 1977

RE: Schultze Memorandum on Economic Impact Analysis

Since Charlie's proposal has a major impact on the departments and agencies--especially those with regulatory authority--we have attempted to assure that those departments and agencies had ample opportunity to comment. Charlie and his staff assure us that comment has taken place at several stages in the development of this memorandum:

-- Charlie's first version of the memorandum was circulated to Cabinet members in March. Comments received suggested a shift in the timing of regulatory review. This change was made.

-- A revised draft was circulated, and additional comments criticized the proposal as excessively bureaucratic. Charlie then reduced the size of the Executive Group and agreed to the suggestion that agencies would rotate on and off that group.

-- Departments and agencies are aware of the final draft, although some have not read the precise text. Charlie is reluctant to circulate this draft because he feels that unnecessary additional delays will result and because it takes into account so many helpful suggestions already made by the Cabinet.

He did, however, give Doug Costle a copy, and Doug's important comments are attached.

Attachment

THE CHAIRMAN OF THE
COUNCIL OF ECONOMIC ADVISERS
WASHINGTON

September 20, 1977

MEMORANDUM FOR THE PRESIDENT

FROM: Charlie Schultze CLS

Subject: Economic Impact Analysis

Last March, and again in your Anti-Inflation Message, you endorsed the broad outlines of a program to review the economic impact of major proposed regulations, and directed your advisers to develop final proposals for such a program. This memo describes the program developed by an interagency task force in response to your directive, and seeks your approval to implement it immediately.

The Regulatory Analysis Program

I recommend that this economic impact review be known as the "Regulatory Analysis Program," in order to sever any connections with the much-criticized "Economic Impact Statement Program" of the Ford Administration. In brief, the Regulatory Analysis Program would consist of the following two elements:

1. A Regulatory Analysis

Each Agency would be required to prepare a regulatory analysis for all major proposed regulations. The regulatory analysis

-- would be brief (20 to 40 pages)

-- would be issued when the regulation is first proposed for public comment.

-- would include an evaluation of the economic impact of the proposed regulation, and of alternative regulatory approaches considered by the agency.

Regulatory agencies have commented favorably on several aspects of the program:

-- The review takes place after the regulation has been offered for public comment. Much crucial data that agencies need to make proper regulatory decisions becomes available only after agencies have requested comments on proposed regulations. Under this process, the Review Group will be able to take advantage of that data in making its analysis.

-- The Review Process will not delay the promulgation of regulations. Moreover, by requiring agencies to disclose and seek comments on alternative regulatory approaches, it will be possible under the law to make a major shift in regulatory approach in response to public comments. Unless those alternatives are listed, a change in regulatory approach would require an entirely new comment period. Thus, the regulatory process may to some extent be expedited by these reforms.

-- A process of peer-review, through the RA Review Group, has been substituted for the antagonistic and generally unproductive public filings by the Council on Wage and Price Stability under the Ford Administration program.

This proposal has been endorsed by CEA, OMB, Treasury, Labor, Commerce, COWPS and the Domestic Policy Staff. While several regulatory agencies would prefer that there be no process to examine the economic impact of major proposed regulations, almost all agree that if such a process is to exist, this approach is acceptable and meets their most urgent concerns.

If you concur, I believe that this program should be put into effect as soon as possible. OMB will incorporate any necessary orders from you into the Executive Order it currently is preparing that implements your Regulatory Process reforms.

Approve Program as Described_____

Do Not Approve_____

See Me_____

If you approve of the program, language announcing your decision will be incorporated in a letter to the Cabinet and to regulatory agency heads announcing your reforms of the regulatory process and distributing an executive order implementing them. This is expected to be done within one month.

THE WHITE HOUSE
WASHINGTON

Rick -

I think it is very important for our comments and Doug's to go in as is.

Thanks.

Jane

THE CHAIRMAN OF THE
COUNCIL OF ECONOMIC ADVISERS
WASHINGTON

September 20, 1977

MEMORANDUM FOR THE PRESIDENT

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-- Finally, in a very limited number of cases of serious importance, differences may be brought to your attention for guidance.

The review group would include the major economic agencies of the Administration (Treasury, Commerce, Labor, OMB and CEA) and all non-independent regulatory agencies. An Executive Committee would be charged with selecting regulations for the group to review. The Executive Committee would include: (CEA (Chair) and OMB, plus one representative each, selected quarterly on a rotating basis, from the other economic agencies and from the regulatory agencies that are members of the Review Group. The Council on Wage and Price Stability will provide staff support to the Review Group.

Reviews will take place during the period that the Agency is collecting public comments on the proposed regulation. The Review Group will not have authority to delay or order changes in the proposed regulation. Results of the review will be placed in the record of public comments on the regulation at various stages in the review process. This will make the outcome of the review available to the public, and will keep this program in conformity with the law.

Discussion of the Proposal

The proposed procedure seems complex. It is -- but necessarily so.

First, to be successful it is essential that the regulatory agencies themselves be a part of the process. Ultimately, we want them to improve their own economic analysis. If they see this review solely as a device for Treasury, CEA, OMB, Labor and Commerce to strong-arm them on particular regulations, the system won't work.

Second, the legal procedure surrounding the rule-making process in regulatory matters made it impossible to discuss proposed regulations in an informal fashion, as we do budget requests or proposed new legislation. Various procedural rules have to be accommodated.

This program has been worked out through lengthy but, I believe, extremely productive discussions with a large number of agencies. The group that devised this program consisted of representatives from the Departments of Commerce, Labor and Treasury, and OMB, the Domestic Policy Staff, and the Council on Wage and Price Stability. Several drafts of the proposal have received extensive comment from the regulatory agencies affected by the proposal, including the Departments of Agriculture, Defense, Energy, HEW, Interior, Justice, Transportation, and the Environmental Protection Agency.

The objective of the program is to insure, to the extent possible, that Federal agencies select the most cost-effective approach to any regulatory problem. In its broad outlines, this proposal conforms to the proposal you endorsed in March. However, agency comments have caused us to modify that proposal substantially.

This proposal is an integral part of the regulatory process reforms that you already have approved. Major innovations in this process are essential if we are to introduce economic considerations into the regulation writing process. Other regulatory process reforms will exert continual pressure on agencies to consider carefully the economic consequences of their regulatory proposals. The program to review Regulatory Analyses will serve as a quality-control on the final regulatory product.

Regulatory agencies have commented favorably on several aspects of the program:

-- The review takes place after the regulation has been offered for public comment. Much crucial data that agencies need to make proper regulatory decisions becomes available only after agencies have requested comments on proposed regulations. Under this process, the Review Group will be able to take advantage of that data in making its analysis.

-- The Review Process will not delay the promulgation of regulations. Moreover, by requiring agencies to disclose and seek comments on alternative regulatory approaches, it will be possible under the law to make a major shift in regulatory approach in response to public comments. Unless those alternatives are listed, a change in regulatory approach would require an entirely new comment period. Thus, the regulatory process may to some extent be expedited by these reforms.

-- A process of peer-review, through the RA Review Group, has been substituted for the antagonistic and generally unproductive public filings by the Council on Wage and Price Stability under the Ford Administration program.

This proposal has been endorsed by CEA, OMB, Treasury, Labor, Commerce, COWPS and the Domestic Policy Staff. While several regulatory agencies would prefer that there be no process to examine the economic impact of major proposed regulations, almost all agree that if such a process is to exist, this approach is acceptable and meets their most urgent concerns.

If you concur, I believe that this program should be put into effect as soon as possible. OMB will incorporate any necessary orders from you into the Executive Order it currently is preparing that implements your Regulatory Process reforms.

Approve Program as Described_____

Do Not Approve_____

See Me_____

If you approve of the program, language announcing your decision will be incorporated in a letter to the Cabinet and to regulatory agency heads announcing your reforms of the regulatory process and distributing an executive order implementing them. This is expected to be done within one month.

THE WHITE HOUSE
WASHINGTON

/	FOR STAFFING
	FOR INFORMATION
	FROM PRESIDENT'S OUTBOX
	LOG IN/TO PRESIDENT TODAY
	IMMEDIATE TURNAROUND

ACTION	FYI	
	/	MONDALE
		COSTANZA
/		EIZENSTAT
/		JORDAN
/		LIPSHUTZ
/		MOORE
	/	POWELL
/		WATSON
/		LANCE
		SCHULTZE

	ENROLLED BILL
	AGENCY REPORT
	CAB DECISION
	EXECUTIVE ORDER

Comments due to Carp/Huron within 48 hours; due to Staff Secretary next day

		ARAGON
		BOURNE
		BRZEZINSKI
		BUTLER
		CARP
		H. CARTER
		CLOUGH
		FALLOWS
		FIRST LADY
		HARDEN
		HUTCHESON
		JAGODA
		KING

		KRAFT
		LINDER
		MITCHELL
		MOE
		PETERSON
		PETTIGREW
		POSTON
		PRESS
		SCHLESINGER
		SCHNEIDERS
		STRAUSS
		VOORDE
		WARREN

THE WHITE HOUSE

WASHINGTON

Date: September 23, 1977

MEMORANDUM

FOR ACTION:
Stu Eizenstat
Hamilton Jordan
Robert Lipshutz
Frank Moore
Jack Watson
Jim McIntyre

FOR INFORMATION:
Vice President Mondale
Jody Powell

FROM: Rick Hutcheson, Staff Secretary

SUBJECT: Economic Impact Analysis

YOUR RESPONSE MUST BE DELIVERED TO THE STAFF SECRETARY BY:

TIME: 12:00 Noon

DAY: Monday

DATE: September 26, 1977

ACTION REQUESTED:

_x_ Your comments

Other:

STAFF RESPONSE:

____ I concur. ____ No comment.

Please note other comments below:

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

THE WHITE HOUSE

WASHINGTON

October 4, 1977

MEMORANDUM FOR: THE PRESIDENT

FROM: STU EIZENSTAT SAE
SI LAZARUS SL

SUBJECT: Charlie Schultze's Memo on Economic Impact Analysis

Developing a sensible approach to improving the economic "common-sense" of regulatory decision-making is a thorny political and administrative problem, and Charlie and his staff have admirably worked through the difficulties to design this proposal. As his memo recites, we were associated with the effort, and we consider the product workable.

We believe that this proposal represents an improvement over the Ford economic impact analysis program embodied in the executive order currently in effect, but if not carefully implemented, it could develop some of the same difficulties which hobbled the Ford effort. In particular:

-- The requirement that agencies prepare a "regulatory analysis" to accompany major proposed regulations could remain an unjustified paper work burden, prepared after the fact to defend (not to assist in formulating) agency proposals. To avoid this risk, it is necessary to emphasize that the point of the requirement is to encourage agencies to think through alternative approaches before picking the best approach, and to keep the regulatory analyses themselves brief.

-- The interagency review procedure could be viewed, as Charlie notes, as an Executive Office effort to "strong-arm" environmental, health, and safety regulation, if the regulatory agencies get the impression that they are not being listened to.

-- The interagency review procedure could be just as contentious as the Ford procedure (the "peer review" dialogue will inevitably be conducted through leak-generated media reports), if you do not give occasional reminders of your personal support for the program, and of your concern that it be executed with discretion and appreciation for all points of view.

We recommend that you mention the program at a Cabinet meeting in the near future and make the points noted above and in Harrison Wellford's comments.

PRESIDENT'S
REORGANIZATION
PROJECT

WASHINGTON, D.C. 20503

SEP 26 1977

MEMORANDUM FOR RICK HUTCHESON

FROM: HARRISON WELLFORD

SUBJECT: Economic Impact Analysis

We have reviewed CEA's proposal for improving economic analysis of major regulations and agree with the overall approach. OMB staff have worked closely with CEA staff to design a system which will improve the quality of analysis done by regulatory agencies while minimizing delays in the regulatory process.

However, it should be recognized that instituting this system does not come without potential risk. The review of even a small number of major regulatory proposals will involve some highly contentious issues which heretofore have not been brought to the White House. Therefore, there are potential political costs involved in this procedure.

The system for peer-group and executive committee analysis of major regulatory analyses has been carefully designed to minimize these risks. We believe that the benefits of the system can be made to outweigh any potential risks if several caveats are kept in mind in designing the implementing guidelines:

(1) The review process should be kept as informal as possible. This will permit us to adapt to different circumstances that may arise with different types of regulations and allow improvements in the process as it develops.

(2) It should be made clear that any "voting" in the process is limited to selecting the 10-20 regulations to be reviewed and will not be used to resolve disagreements among agencies.

(3) It should be emphasized that the purpose of this new regulatory analysis program is to help the agencies improve their ability to develop and issue effective, less burdensome regulations. This can be achieved by focusing on a discrete number of proposed regulations each year. Finally, if the integrity of these procedures are to be preserved, we must avoid any criticism that we are focusing on certain agencies or types of regulations.

We will continue to work with CEA in developing the best program possible.

THE WHITE HOUSE

WASHINGTON

Date: September 23, 1977

MEMORANDUM

FOR ACTION:
Stu Eizenstat
Hamilton Jordan
Robert Lipshutz
Frank Moore
Jack Watson
Jim McIntyre

FOR INFORMATION:
Vice President Mondale
Jody Powell

FROM: Rick Hutcheson, Staff Secretary

SUBJECT: Economic Impact Analysis

YOUR RESPONSE MUST BE DELIVERED TO THE STAFF SECRETARY BY:

TIME: 12:00 Noon

DAY: Monday

DATE: September 26, 1977

ACTION REQUESTED:

_x_ Your comments

Other:

STAFF RESPONSE:

____ I concur. ____ No comment.

Please note other comments below:

SLiaison: Would the adequacy of the regulatory analysis be subject to challenge in the courts? (BT)

HLiaison: No Comment

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

THE WHITE HOUSE

WASHINGTON

MEMORANDUM TO: THE PRESIDENT

FROM: Jack Watson
Jane Frank Jane September 28, 1977

RE: Schultze Memorandum on Economic Impact Analysis

Since Charlie's proposal has a major impact on the departments and agencies--especially those with regulatory authority--we have attempted to assure that those departments and agencies had ample opportunity to comment. Charlie and his staff assure us that comment has taken place at three stages in the development of this memorandum, and that the final version reflects the changes suggested:

-- Charlie's first version of the memorandum was circulated to Cabinet members in March. Comments received suggested a shift in the timing of regulatory review. This change was made.

-- A revised draft was circulated, and additional comments criticized the proposal as excessively bureaucratic. Charlie then reduced the size of the Executive Group and agreed to the suggestion that agencies would rotate on and off that group.

-- Departments and agencies are aware of the final draft, although they have not read the precise text. Charlie and his staff are confident that they are all willing to work with the program. Only EPA says that the program is unnecessary.

THE WHITE HOUSE

WASHINGTON

Date: September 23, 1977

MEMORANDUM

FOR ACTION:
Stu Eizenstat
Hamilton Jordan
Robert Lipshutz
Frank Moore
Jack Watson
Jim McIntyre

FOR INFORMATION:
Vice President Mondale
Jody Powell

FROM: Rick Hutcheson, Staff Secretary

SUBJECT: Economic Impact Analysis

YOUR RESPONSE MUST BE DELIVERED TO THE STAFF SECRETARY BY:

TIME: 12:00 Noon

DAY: Monday

DATE: September 26, 1977

ACTION REQUESTED:

__x__ Your comments

Other:

STAFF RESPONSE:

____ I concur.

__✓__ No comment.

Please note other comments below:

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

THE WHITE HOUSE

WASHINGTON

MEMORANDUM TO: THE PRESIDENT

FROM: Jack Watson
Jane Frank Jane Sepgember 26, 1977

RE: Charlie Schultze's Memorandum--
Economic Impact Analysis

We understand that several Cabinet members want to comment on this memorandum, but that Charlie feels that you should review it first. We, therefore, suggest that you read it, approve its general thrust, but defer any final decision until after the Cabinet has a chance to comment.

Bill - check w/ Stu - Ford
out which Cab Offices
wish to comment - will
staff out after checking
w/ Jared (I don't think
CEA will object, despite
Jane's comments)

THE WHITE HOUSE

WASHINGTON

Date: September 23, 1977

MEMORANDUM

FOR ACTION:
Stu Eizenstat
Hamilton Jordan
Robert Lipshutz
Frank Moore
Jack Watson
Jim McIntyre

FOR INFORMATION:
Vice President Mondale
Jody Powell

FROM: Rick Hutcheson, Staff Secretary

SUBJECT: Economic Impact Analysis

YOUR RESPONSE MUST BE DELIVERED TO THE STAFF SECRETARY BY:
TIME: 12:00 Noon
DAY: Monday
DATE: September 26, 1977

ACTION REQUESTED:
__x__ Your comments
Other:

STAFF RESPONSE:
____ I concur.
__x__ No comment.
Please note other comments below:

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

THE WHITE HOUSE
WASHINGTON
October 11, 1977

Jack Watson

The attached was returned in the President's outbox. It is forwarded to you for appropriate handling.

Rick Hutcheson

RE: FOLLOW-UP ON YOUR SOUTH BRONX VISIT

THE WHITE HOUSE
WASHINGTON

	FOR STAFFING
	FOR INFORMATION
✓	FROM PRESIDENT'S OUTBOX
	LOG IN/TO PRESIDENT TODAY
	IMMEDIATE TURNAROUND

ACTION	FYI	
		MONDALE
		COSTANZA
		EIZENSTAT
		JORDAN
		LIPSHUTZ
		MOORE
		POWELL
✓		WATSON
		LANCE
		SCHULTZE

	ENROLLED BILL
	AGENCY REPORT
	CAB DECISION
	EXECUTIVE ORDER

Comments due to Carp/Huron within 48 hours; due to Staff Secretary next day

		ARAGON
		BOURNE
		BRZEZINSKI
		BUTLER
		CARP
		H. CARTER
		CLOUGH
		FALLOWS
		FIRST LADY
		HARDEN
		HUTCHESON
		JAGODA
		KING

		KRAFT
		LINDER
		MITCHELL
		MOE
		PETERSON
		PETTIGREW
		POSTON
		PRESS
		SCHLESINGER
		SCHNEIDERS
		STRAUSS
		VOORDE
		WARREN

THE WHITE HOUSE

WASHINGTON

October 7, 1977

C

MEMORANDUM FOR THE PRESIDENT

FROM: Jack Watson

SUBJECT: FOLLOW-UP ON YOUR SOUTH BRONX VISIT

I have already talked with Pat Harris and Cece Andrus about your request for a coordinated interagency proposal on the South Bronx and will talk with Juanita, Ray and Joe next week. (Although they were not among the addressees on your October 7th note, Brock Adams and Mike Blumenthal also need to be included, and I will do so.) I am tentatively planning to go to New York either on Friday, October 14 or on Monday, October 17 after the Cabinet meeting, to talk with a wide range of people who are knowledgeable about the situation in the South Bronx. I am arranging to talk next week with all of the relevant agency folks here in order to make a preliminary survey of issues, problems, programs and available resources from the federal perspective.

As you requested, I shall try to do the whole thing as quietly as possible. Frank Moore said that it would be extremely helpful if I would consult with Herman Badillo before making the visit into his District. As you know, Badillo was very upset that he did not know about your tour and has raised Cain with Frank, Pat Harris, and others about the matter. The problem is that Frank and others agree that there is no way to keep my visit quiet if Badillo knows about it. I will discuss the situation further with Frank to see what he thinks we should do.

Just don't feel him about an specific visit of yours.

J

THE WHITE HOUSE
WASHINGTON

October 10, 1977

The Vice President
Stu Eizenstat
Frank Moore
Jody Powell

The attached will be submitted to the President. This copy is forwarded to you for your information.

Rick Hutcheson

FOLLOW-UP ON YOUR SOUTH BRONX VISIT

THE PRESIDENT HAS SEEN.

THE WHITE HOUSE
WASHINGTON

Mr. President:

Warren Cristopher called to say that Senator Byrd wants to bring a group of 12 Senators here in the morning to discuss with you a joint statement of interpretation (3 paragraphs) on the Canal Treaty.

We could schedule Zbig for 7:30, and the Senators for 8. Your next appointment would be at 9, with the Penna. Congressional delegation. The Byrd group would take about 30 minutes, according to Cristopher.

Frank Moore recommends the meeting.

approve meeting ✓

other

2:30 PM

THE WHITE HOUSE

WASHINGTON

INFORMATION

October 10, 1977

MEMORANDUM FOR THE PRESIDENT

FROM: HUGH CARTER HC

SUBJECT: Meeting on the White House, Vice President, Executive Residence, Domestic Policy Staff and Office of Administration Authorization Bill

The purpose of this meeting is to familarize you with the above noted authorization bill, and ask your guidance on several key points which will probably come up for negotiation.

1. History:

   a. For the past few years, a point of order has been raised in the House on White House and related appropriation bills because the House rules generally require an authorization bill before there can be an appropriation bill. There is now no general authorization bill for the White House Office, the Office of the Vice President, the Executive Residence at the White House, the Domestic Policy Staff, or the proposed Office of Administration.

   b. Congressman Steed, Chairman, House Appropriations Subcommittee on Treasury, Postal Service, and General Government, and others, have pointedly asked for a general authorization bill this year to avoid further points of order and delay in the House.

   c. Representatives Herbert Harris, Pat Schroeder, and Mo Udall have pending a bill which is not acceptable in that it severely limits numbers of White House and other personnel.

   d. Present appropriation legislation on the books is attached at Tab A.

2. Proposed Bill: (Tab B)

a. Our proposed bill, prepared by representatives of the above noted EOP units, is attached at Tab B. It generally authorizes the present practices in the White House and other offices. (No need to read.)

b. We have met with Representative Udall and he has indicated general support for a bill along the lines of Tab B. We have also met with Representatives Harris and Schroeder.

c. Probable points of compromise already in the bill, and on which we need your guidance are:

1. Number of executive level positions authorized.

2. Use of and reporting of detailees.

d. Possible additional compromise points not presently in the bill, but which may be introduced into the bill in Congress (and on which we need your guidance) are:

1. Number of supergrade (GS-16 -- GS-18) positions authorized.

2. Total employment limits on the White House staff and other units.

e. We should send the bill to Congress by Thursday of this week.

THE WHITE HOUSE OFFICE

Federal Funds

General and special funds:

SALARIES AND EXPENSES

For expenses necessary for the White House Office as authorized by law, including not to exceed $3,850,000 for services as authorized by 5 U.S.C. 3109, at such per diem rates for individuals as the President may specify and other personal services without regard to the provisions of law regulating the employment and compensation of persons in the Government service; hire of passenger motor vehicles, newspapers, periodicals, teletype news service, and travel (not to exceed $100,000 to be accounted for solely on the certificate of the President); and not to exceed $10,000 for official entertainment expenses to be available for allocation within the Executive Office of the President; [$16,530,000] *$17,580,000. (Executive Office Appropriations Act, 1977.)*

EXECUTIVE RESIDENCE

Federal Funds

General and special funds:

OPERATING EXPENSES

For the care, maintenance, repair and alteration, refurnishing, improvement, heating and lighting, including electric power and fixtures, of the Executive Residence, to be expended as the President may determine, notwithstanding the provisions of this or any other Act, and official entertainment expenses of the President to be accounted for solely on his certificate, [$2,095,000] *$2,157,000. (3 U.S.C. 109–110; D.C. Code 8–108; Executive Office Appropriations Act, 1977.)*

SPECIAL ASSISTANCE TO THE PRESIDENT

Federal Funds

General and special funds:

SALARIES AND EXPENSES

For expenses necessary to enable the Vice President to provide assistance to the President in connection with specially assigned functions, services as authorized by 5 U.S.C. 3109, but at rates for individuals not to exceed the per diem equivalent of the rate for grade GS–18, compensation for one position at a rate not to exceed the rate of level II of the Executive schedule, and other personal services without regard to the provisions of law regulating the employment and compensation of persons in the Government service, including hire of passenger motor vehicles, [$1,246,000.] *$1,327,000. (Executive Office Appropriations Act, 1977.)*

DOMESTIC COUNCIL

Federal Funds

General and special funds:

SALARIES AND EXPENSES

For necessary expenses of the Domestic Council, including services as authorized by 5 U.S.C. 3109, but at rates for individuals not to exceed the per diem equivalent of the rate for grade GS–18; and other personal services without regard to the provisions of law regulating the employment and compensation of persons in the Government service; [$1,700,000] *$1,850,000. (Reorganization Plan No. 2 of 1970; Executive Order No. 11541; Public Law 91–186; Executive Order No. 11455; Executive Order No. 11690; Executive Office Appropriations Act, 1977.)*

B

A BILL

Comment

To clarify existing authority for employment of personnel in the White House Office and the Executive Residence at the White House, to clarify existing authority for employment of personnel for assistance for the Vice President, to clarify existing authority to pay offical expenses of such offices, to clarify existing authority for employment of personnel for the Domestic Policy Staff, to clarify existing authority for employment of personnel for the Office of Administration, for authority to meet unanticipated needs, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States in Congress assembled, That:

Sec. 1, Section 105 of title 3, United States Code is amended to read as follows:

"105. Employees of the White House Office

New General Authorization

(a) There are authorized for each fiscal year such sums as the Congress shall appropriate for the compensation of employees of the White House Office (including those assigned to assist the spouse of the President).

Specifically authorize 50 Executive Level positions in White House Office

(b) The President may appoint, determine the duties of, and establish the compensation of employees of the White House Office without regard to any other provision of law regulating the employment or compensation of persons in the Government service:

Provided, that there shall be no more than 50 of such employees compensated at rates of basic compensation above that authorized for GS-18 of the General Schedule; and provided further, that the rate of basis compensation for such employees shall not exceed that now or hereafter specified for level II of the Executive Schedule.

Sec. 2, Section 106 of title 3, United States Code, is amended to read as follows:

"106. Employees of the Office of the Vice President

New General Authorization for Office of the Vice President

(a) There are authorized for each fiscal year such sums as the Congress shall appropriate for the compensation of employees of the Office of the Vice President (including those assigned to assist the spouse of the Vice President), to enable the Vice President to provide special assistance to the President in connection with specially-assigned functions.

(b) The Vice President may appoint, determine the duties of, and establish the compensation of employees of the Office of the Vice President without regard to any other provision of law regulating the employment or compensation of persons in the Government service: Provided, that there shall be not more than five of such employees compensated at rates of basic compensation above that authorized for GS-18 of the General Schedule, and provided furhter: That the rate of basic compensation for such employees shall not

Specific authorization for 5 Executive Level positions in Office of the Vice President

exceed that now or hereafter specified for level II of the Executive Schedule."

Sec. 3, Section 107 of title 3, United States Code, is amended to read as follows:

"107. Detail of Employees of Executive Departments to the White House Office, the Office of the Vice President, the Domestic Policy Staff, and the Office of Administration

Employees of the executive departments and independent establishments of the executive branch of the Government may be detailed from time to time to the White House Office, the Office of the Vice President, the Domestic Policy Staff, or the Office of Administration for temporary assistance: Provided, that the Office of Administration shall submit to the Congress, within sixty days of the end of each fiscal year, a report setting forth the number of the detailees hereinafter specified, and their approximate total annual rates of basic compensation paid for the periods of such details. The detailees to be included in said report shall be those persons who are performing duties normally performed by employees of the White House Office, the Office of the Vice President, the Domestic Policy Staff, or the Office of Administration, and who have been detailed to such office for a period exceeding 90 days in the fiscal year as to which

Amends existing Broad Detailee Authority to provide for Annual Report to Congress

the report is submitted."

Sec. 4, A new Section 108 of title 3, United States Code, is enacted to read as follows:

"108. Employees of the Executive Residence at the White House

New General Authorization for Executive Residence at the White House

(a) There are authorized for each fiscal year such sums as the Congress shall appropriate for the compensation of employees of the Executive Residence at the White House.

New specific hiring authority at up to GS-18

(b) The President may appoint, determine the duties of, and establish the compensation of employees of the Executive Residence at the White House, without regard to any other provisions of law regulating the employment or compensation of persons in the Government service: Provided, that such employees shall not be compensated at rates of basic compensation above that authorized for GS-18 of the General Schedule"

Sec. 5, a new Section 112 of title 3, United States Code, is enacted to read as follows:

§112. Temporary Employment of Experts and Consultants

New General Authority to hire Consultants above normal GS-15 pay limit

The White House Office, Office of the Vice President, Executive Residence at the White House, Domestic Policy Staff, and the Office of Administration may temporarily employ experts and consultants, or an organization thereof, without regard to any other

provision of law regulating the employment or compensation of persons in the Government service provided that the daily equivalent rate paid to such expert or consultant shall not exceed:

(a) level II of the Executive Schedule, in the case of the White House Office and the Office of the Vice President;

(b) level III of the Executive Schedule, in the case of the Domestic Policy Staff; and

(c) GS-18 of the General Schedule, in the case of the Office of Administration, or the Executive Residence at the White House.

Sec. 6, a new Section 113 of title 3, United States Code, is enacted to read as follows:

"113. Official Expenses of the White House Office, Office of the Vice President, and the Executive Residence at the White House

New General Expense Authorization based upon existing appropriations and practice

There are hereby authorized in each fiscal year such sums as the Congress may appropriate for the following purposes:

(a) The care, maintenance, repair, alterations, improvements, utility costs, and other expenses of the Executive Residence at the White House to be accounted for solely upon the certificate of the President;

(b) The operating expenses of the White House Office and Office of the Vice President;

(c) Official reception, entertainment, and representation expenses of the President and Vice President (to be accounted for solely upon the certificate of the President or the Vice President, respectively);

(d) Offical entertainment expenses, to be available for allocation within the Executive Office of the President;

(e) Other official expenses of the President, the Vice President, the spouses and staff of the President and Vice President;

(f) Subsistence expenses of Government employees, while traveling in conjunction with the travel of the President or Vice President or their spouses, upon approval of the President or Vice President, without regard to the provisions of Section 5702 of Title 5; and

(g) An amount not to exceed $1,000,000 in any fiscal year to enable the President, in his discretion, to meet unanticipated needs for furtherance of the national interest, security and defense.

The sums provided for in this Section 113 shall be expended without regard to any other provisions of law regulating the employment and compensation of persons in, or procurement of goods and services for, the Government.

Sec. 7, a new Section 114 of title 3, United States Code is enacted to read as follows:

"114. The Domestic Policy Staff

General Authorization for Domestic Policy Staff with specific authority for six assistants at Executive Levels

There are authorized in each fiscal year such sums as the Congress may appropriate to enable the Domestic Policy Staff, without regard to any other provision of law regulating employment and pay of persons in the Government service, to provide assistance to the President in connection with the performance of functions assigned to such Staff by the President in the discharge of its official duties and responsibilities, including the use of such funds to establish the compensation for such administrative and staff assistants as may be necessary: Provided that there shall be no more than six of such assistants compensated at rates of basic compensation above that authorized for GS-18 of the General Schedule, and provided further, that the rate of basic compensation for no person employed shall exceed that now or hereafter specified for level III of the Executive Schedule."

Sec. 8, a new Section 115 of title 3, United States Code is enacted to read as follows:

"115. The Office of Administration

General Authorization for Office of Administration

There are authorized in each fiscal year such sums

as the Congress may appropriate to enable the Office of Administration of the Executive Office of the President, to discharge its duties and responsibilities.

Specific six month authority to hire and fire without regard to normal civil service restrictions

For a period of six months after the date of enactment of this bill, the Office of Administration may appoint, determine the duties of, and establish the compensation for all of its employees without regard to any other provision of law regulating the employment and compensation of persons in the Government service. Thereafter, the Office of Administration may appoint, determine the duties of, and establish the compensation for not more than five of its employees without regard to any other provision of law regulating employment and compensation of persons in the Government service; provided, that the rate of basic compensation for no employee of the Office of Administration shall at no time exceed that now or hereafter specified for level III of the Executive Schedule."

Specific continuing Authority for five non-classified positions at up to Executive Level III

Sec. 9

Technical amendments changing name to "Executive Residence at the White House"

(a) Section 102 of title 3, United States Code, is amended by striking out "Executive Mansion" and inserting in lieu thereof "Executive Residence at the White House".

(b) Section 103 of title 3, United States Code, relating to traveling expenses of the President is amended

by striking out "$40,000" and inserting in lieu thereof "$100,000".

(c) Section 109 of title 3, United States Code, is amended:

(A) by striking out from the section caption "EXECUTIVE MANSION" and inserting in lieu thereof "EXECUTIVE RESIDENCE AT THE WHITE HOUSE"; and

(B) by striking out from the text "Executive Mansion" each place it appears and inserting in lieu thereof "Executive Residence at the White House".

(d) Section 110 of title 3, United States Code, is amended:

(i) by inserting in the section caption, immediately before "WHITE HOUSE" the following: "EXECUTIVE RESIDENCE AT THE";

(ii) by striking out "President's House" and inserting in lieu thereof the following: "Executive Residence at the White House"; and

(iii) by striking out "White House" each place it appears and inserting in lieu thereof "Executive Residence at the White House".

(iv) by striking out the last sentence; so that, as amended, said section shall read as follows:

"§110. Furniture for Executive Residence at the White House

All furniture purchased for the use of the Executive Residence at the White House shall be, as far as practicable, of domestic manufacture. With a view to conserving in the Executive Residence at the White House the best specimens of the early American furniture and furnishing, and for the purpose of maintaining the interior of the Executive Residence at the White House in keeping with its original design, the Director of the National Park Service is authorized and directed, with the approval of the President, to accept donations of furniture and furnishings for use in the Executive Residence at the White House, all such articles thus donated to become the property of the United States and to be accounted for as such."

(e) Section 202 of title 3, United States Code, is amended by striking out "Executive Mansion" and inserting in lieu thereof "White House".

Sec 10. The table of sections for chapter 2 of title 3, United States Code, is amended to read as follows:

Technical relisting of old and new section titles

"§101. Commencement of Term of Office

§102. Compensation of the President

THE WHITE HOUSE
WASHINGTON

October 11, 1977

Hamilton Jordan

The attached was returned in the President's outbox. It is forwarded to you for appropriate handling.

Rick Hutcheson

LETTER TO CONG. FRASER ON
DEMOCRATIC PARY AND WINOGRAD
COMMISSION

THE WHITE HOUSE
WASHINGTON

	FOR STAFFING
	FOR INFORMATION
/	FROM PRESIDENT'S OUTBOX
	LOG IN/TO PRESIDENT TODAY
	IMMEDIATE TURNAROUND

ACTION	FYI	
		MONDALE
		COSTANZA
		EIZENSTAT
/		JORDAN
		LIPSHUTZ
		MOORE
		POWELL
		WATSON
		LANCE
		SCHULTZE

		ENROLLED BILL
		AGENCY REPORT
		CAB DECISION
		EXECUTIVE ORDER

Comments due to Carp/Huron within 48 hours; due to Staff Secretary next day

		ARAGON
		BOURNE
		BRZEZINSKI
		BUTLER
		CARP
		H. CARTER
		CLOUGH
		FALLOWS
		FIRST LADY
		HARDEN
		HUTCHESON
		JAGODA
		KING

		KRAFT
		LINDER
		MITCHELL
		MOE
		PETERSON
		PETTIGREW
		POSTON
		PRESS
		SCHLESINGER
		SCHNEIDERS
		STRAUSS
		VOORDE
		WARREN

THE WHITE HOUSE
WASHINGTON

10/8

Susan -

Attached is Rep. Don Fraser's letter regarding the Winograd Commission, along with a letter for the President's signature, drafted by Hamilton.

Kathy

Kathy Faker

Ham
See me
J

THE WHITE HOUSE

WASHINGTON

October 7, 1977

To Congressman Don Fraser

I appreciate your advising me of your views on the Democratic Party rules changes now under consideration by the Winograd Commission.

I strongly support the basic reform of the Democratic Party's delegate selection rules, which evolved over the past several years under the leadership of Senator McGovern, Congresswoman Mikulski and yourself.

Our Party is now governed by rules which provide for basic fairness, and for procedural safeguards which protect the interests of the Party, of presidential candidates and of Democratic voters. My judgment is that these rules worked well in 1976!

Although some minor adjustments should be made to reflect the experience of participants in 1976, I do not believe any major changes in the rules are necessary at this time. The most dramatic change, noted in your letter, was the decision of the 1976 Convention to forbid the use of so-called "loophole" primaries in selecting delegates.

I know of no efforts by my staff to rewrite the "fair reflection" rule of the Party. Proposals to raise the congressional district threshhold from 15% to 20% and then 25% toward the end of the nominating process appear to me to represent no great departure from the 15% rule permitted by the 1976 rules. The proposed change would permit a wide representation of candidates of varying strength early in the process, and then tend to narrow in on candidates who demonstrate the greatest popular support toward the end of the nominating process, which seems to me to be a desirable goal.

I also think it would be appropriate to make this rule mandatory, and hence uniform in application among all states. State parties would then have to make a good faith effort to bring their delegate selection rules into compliance with this national standard.

In my opinion, the right of presidential candidates to ensure that their delegates are bona fide supporters, the "candidate right of approval" to which you also refer, should be maintained. This rule protects the interests of all presidential candidates and their supporters.

I am confident that the present rules commission, under the leadership of Morley Winograd, will preserve the essential safeguards embodied in the 1976 rules, and provide for the equal protection of presidential candidates and voters in future nominating years.

With best personal regards,

Sincerely,

The Honorable Don Fraser
U.S. House of Representatives
Washington, D.C. 20515

DONALD M. FRASER
5TH DISTRICT, MINNESOTA

2268 HOUSE OFFICE BUILDING
202-225-4755

DISTRICT OFFICE:
166 FEDERAL COURTS BUILDING
MINNEAPOLIS, MINNESOTA 55401
612-725-2081

Congress of the United States
House of Representatives
Washington, D.C. 20515

INTERNATIONAL RELATIONS COMMITTEE

SUBCOMMITTEE:
CHAIRMAN, INTERNATIONAL ORGANIZATIONS

BUDGET COMMITTEE

September 21, 1977

Honorable Jimmy Carter
The President
The White House
Washington, D.C. 20500

ack-P/HJ
CONGRESSIONAL
LIAISON
SEP 23 1977

Dear Mr. President:

Last week, after a working dinner meeting at the White House, I talked to you briefly about the Democratic Party rule changes now under consideration by the Winograd Commission. I indicated then that I would be sending this letter, which outlines the concerns I mentioned during our conversation.

Over the last eight years, the Democratic Party has moved steadily towards the principle of proportional representation in the selection of national convention delegates. The "fair reflection" rule was recommended by the original McGovern Commission and later adopted by the 1972 National Convention. In 1976, the Convention extended this rule by outlawing so-called "loophole" primaries.

Thus far, no evidence has been presented to the Winograd Commission indicating that proportional representation created major difficulties for any state in 1976. Nevertheless, strong efforts are being made by the White House staff to get the Commission to rewrite the fair reflection rule in order to restrict its application in 1980.

Current party rules permit but do not require states to ignore those candidates who get less than 15% support at the various stages in the delegate selection process. One proposed revision, presented at the August meeting of the Winograd Commission, would raise the cut-off to 25% and would make its application mandatory for the states. This proposed rule change would have the effect of outlawing the present Minnesota selection system and forcing us to move away from the "fair reflection" rule.

At the Commission's meeting earlier this month, a new proportionality plan was presented which would divide the delegate selection period into three parts and would set the cut-off requirement at 15% during the first part of the period, 20% during the second part and 25% during the third. This plan is equally objectionable since it would also force states away from the fair reflection rule and violate the principle that voters across the country should have an equal voice in the delegate selection process. Both plans are clearly perceived as part of an effort to make it more difficult for challengers to mount a campaign for the presidential nomination in 1980.

The Winograd Commission is also being urged by the White House staff to reject efforts to significantly modify the candidate right-of-approval rule. In effect, we are being asked to give the incumbent president the power to pick all or most of the delegates to the next nominating convention. The original intent of the "right-of-approval" rule was to prevent the selection of so-called "faithless" delegates who were not bona fide supporters of the candidates they claimed to represent. This rule needs to be reworked so its original intent can be realized.

These procedural issues are important to many of us who believe the integrity of our party system is seriously threatened by efforts to manipulate party rules -- especially when this manipulation is seen as an attempt to seek an advantage for the incumbent.

I apologize for being so blunt on these matters, but out of respect for your own sense of fairness, I thought these concerns needed to be conveyed to you.

With best wishes.

Sincerely,

Donald M. Fraser

THE WHITE HOUSE
WASHINGTON

October 11, 1977

Hamilton Jordan

The attached was returned in the President's outbox. It is forwarded to you for your information.

Rick Hutcheson

RE: REPLY TO LETTER FROM MORARJI DESI AND PRESIDENTIAL CORRESPONDENCE AND STATE

THE WHITE HOUSE
WASHINGTON

	FOR STAFFING
	FOR INFORMATION
X	FROM PRESIDENT'S OUTBOX
	LOG IN/TO PRESIDENT TODAY
	IMMEDIATE TURNAROUND

return to Z B

ACTION	FYI	
		MONDALE
		COSTANZA
		EIZENSTAT
	X	JORDAN
		LIPSHUTZ
		MOORE
		POWELL
		WATSON
		LANCE
		SCHULTZE

	ENROLLED BILL
	AGENCY REPORT
	CAB DECISION
	EXECUTIVE ORDER

Comments due to Carp/Huron within 48 hours; due to Staff Secretary next day

top page only

	ARAGON
	BOURNE
	BRZEZINSKI
	BUTLER
	CARP
	H. CARTER
	CLOUGH
	FALLOWS
	FIRST LADY
	HARDEN
X	HUTCHESON
	JAGODA
	KING

	KRAFT
	LINDER
	MITCHELL
	MOE
	PETERSON
	PETTIGREW
	POSTON
	PRESS
	SCHLESINGER
	SCHNEIDERS
	STRAUSS
	VOORDE
	WARREN

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

ACTION

October 8, 1977

MEMORANDUM FOR: THE PRESIDENT

FROM: ZBIGNIEW BRZEZINSKI

SUBJECT: Reply to Letter from Morarji Desai

Prime Minister Desai wrote to you on August 16 (Tab B) setting forth at length his views on nuclear matters, and other topics more briefly. The proposed reply at Tab A, based on a State Department draft, is brief and seeks to break no new ground. I believe that you should reserve the substance of this topic for your bilateral meetings with Desai and consider this letter only as a holding operation. It does, however, encourage the Indians to continue technical discussions on nuclear matters.

This letter was received August 23. NSC agreed to State's request for a brief delay so that Joe Nye could be consulted on a reply. A draft reply was ready shortly after September 6, but State insisted on holding the letter until October 1 on the grounds that your trip was being planned. During the last few days, our India man, Thornton, was at the UN with you, and that explains the delay between October 1 and October 7.

The above experience, quite frustrating to all concerned, raises a basic procedural issue: it seems to me that Presidential correspondence should be handled from here, that State should be allowed to comment on it on the basis of strict deadlines, but that we should not have to wait for a State Department green light (for actual text) before submitting a reply for your signature. The fact that the Presidential reply will be outgoing from here, irrespective of whether a State Department input is made or is not made is more likely to generate pressure on State to submit its input on time. Fear of exclusion, and especially fear that policy will be made by Presidential letters is more likely to force State bureaucracy to make its submissions on time.

RECOMMENDATION:

1. That you sign the letter to Morarji Desai at Tab A.

APPROVE _____ DISAPPROVE _____

2. That you approve the issuance of an instruction on Presidential correspondence, as outlined above. A proposed instruction is attached.

APPROVE ✓ DISAPPROVE _____

retype (one-Cy)

Alternat., a note from you to Cy might be useful.

THE WHITE HOUSE
WASHINGTON

3:40 p.m. 10-11-77

for Ullman

Tax reform - votes in

W & M not there =

Haven't backed off

a) Complete hearings maybe as late as 2/22/78

Capital gains

" " at death - no

Carryover basis - now cleaning up

1- Rate reduce

2- Simplify

3- Preferences

4- Integration - ITC - Corp rate

Quickie on withholding - no

Oppose any reduction - out reform

THE WHITE HOUSE
WASHINGTON

insurance - no
real estate - no
corporate expensing - ?
restaurant - ?
integration - ok

Theories
Tightening & goodies

Don't be too ambitious

Pol posture stronger = "Need to do lot more, but need quick action needed."

Senate not moving on energy - "It was so difficult for me to get it through the House."

THE WHITE HOUSE
WASHINGTON

Obásanjo 10/11/77

Past policies disappointing
Remaining doubts relieve?
Don't let press discourage
Rhodesia = Negotiate as fast
negot decisive - good chance
US support → freedom fighting
UN/Carter Need armed struggle should continue
UN/Smith Consult Vorster → Smith
Cloudy - how to remove Smith
US support tentative
US lead is key
Don't leave military to Cuban
Nigeria will provide mil force

=

THE WHITE HOUSE
WASHINGTON

Angola - Neto will prevail
not met Savimbe
Af leaders prefer Cuba out
SA helping Savimbe
Neto had ultra leftists = Δ'ed
- his posit improved
Cuban troops not fluctuating

Chad/Libya = Garba visit
OAU committee
Now quieting down, but
no direct comm c̄ rebels, who
want some autonomy

Ethiopia/Somalia

Mengistu - no cession of territory
OAU mtg - Somalis walked out
"Good offices comm" of OAU
Nig chmn
Somalia wants 3 person mtg
Nig - Som - ETH = Eth: no

THE WHITE HOUSE
WASHINGTON

US/SU keep clear
OAU will appeal to USSR
Sudan type solution -
Federated Eritrea/Ogaden/Ethiopia
Colonial boundaries - preserve
US/SU agree on Red Sea - non-mil
Angola - Neto will not agree if borders secure from SA, etc

Namibia
SA withdrawal 2 mos 3000 → 4000
(1400 combat) East (Ovambo etc)
8 places N border - Platoon (36 men)
270 in all
others logistics support
restrict to bases/U.N. observers
Sharing of 2 bases. no
Elect in Mar - too early

7:55 a.m. THE WHITE HOUSE 10-11-77
WASHINGTON

Long =

Equal tax - doubtful vote

Put $5 on import during conference -

Byrd - Dems against (poll)

Easier to vote for Equal tax if $5 already on

Wait til bill in Conference

Obasanjo - Nigeria

17 - Ike - PM in
Then JFK - PM

Law - Hum Rts - Ind Judy
Most imp trade - Africa
Civil War - Reconstruction
Draft Constitution - US
African / 3rd World Leader
80 mil - 15 states
System - Univ Primary Ed

Don Eggum Supper 10-11-77

Obasanjo - Garba

Mafeni

Achebe - Things Fall Apart

Racial justice

Pride - progress

15000 students

Fellow engineer Baptist

& Civil War → Rebuild

Leader - Nig - Afr - LDC - W

Superpowers no - OAU yes

Mitchell - 1.41 - SC

THE WHITE HOUSE
WASHINGTON

TUESDAY-OCTOBER 11, 1977

10:30 a.m.

MR. PRESIDENT

JAMES DICKEY CALLED.

T.K.

Called back -
no ans
J

DENT HAS SEEN

This was sent to Marjorie Fennell (see below)... didn't know if you wanted to mention it to Dickey if you called him back. (sc)

October 7, 1977

To James Dickey

Rosalynn and I welcome the opportunity to join in this Poetry Day tribute to one of our favorite contemporary poets.

As fellow Georgians we are especially partial to the fact that you have never lost touch with your background. We feel that it has imbued your verse with a special sensitivity and with a keener awareness of the complexity of the human condition.

We join wholeheartedly in the sentiments that will be expressed by your many friends and admirers on this occasion, and we send you our warmest personal regards.

Sincerely,

Mr. James Dickey
4620 Lelias Court
Lake Katherine
Columbia, South Carolina 29206

SENT TO: Ms. Marjorie Fennell
The New York Quarterly
Post Office Box 2115
Grand Central Station
New York, New York 10017

JC:Coolidge:rks
cc: B.Clough/J.Fallows/A.Stern(NYT)/E.Coolidge/CF
EVENT: OCTOBER 15

THE WHITE HOUSE
WASHINGTON

October 11, 1977

Stu Eizenstat

The attached was returned in the President's outbox. It is forwarded to you for appropriate handling.

Rick Hutcheson

SIGNING STATEMENT - S. 1307

THE WHITE HOUSE
WASHINGTON

	FOR STAFFING
	FOR INFORMATION
\	FROM PRESIDENT'S OUTBOX
	LOG IN/TO PRESIDENT TODAY
	IMMEDIATE TURNAROUND

ACTION	FYI	
		MONDALE
		COSTANZA
\		EIZENSTAT
		JORDAN
		LIPSHUTZ
		MOORE
		POWELL
		WATSON
		LANCE
		SCHULTZE

	ENROLLED BILL
	AGENCY REPORT
	CAB DECISION
	EXECUTIVE ORDER

Comments due to Carp/Huron within 48 hours; due to Staff Secretary next day

		ARAGON
		BOURNE
		BRZEZINSKI
		BUTLER
		CARP
		H. CARTER
		CLOUGH
		FALLOWS
		FIRST LADY
		HARDEN
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		JAGODA
		KING

	KRAFT
	LINDER
	MITCHELL
	MOE
	PETERSON
	PETTIGREW
	POSTON
	PRESS
	SCHLESINGER
	SCHNEIDERS
	STRAUSS
	VOORDE
	WARREN

FOR IMMEDIATE RELEASE October 8, 1977

Office of the White House Press Secretary

THE WHITE HOUSE

STATEMENT BY THE PRESIDENT ON S.1307

I am today signing S. 1307, a bill which provides standards for discharge review and benefit eligibility for those persons whose discharge is upgraded by the Department of Defense under the Special Discharge Review Program, and for certain other veterans.

While I believe several of the bill's provisions can be improved, and I will propose legislation next year to do so, S.1307 properly recognizes the need for an equitable and compassionate attitude toward the many veterans who received less than honorable discharges.

One of my first official acts as President was the pardon of those persons who violated selective service laws during the era of the Vietnam war, a war which divided the American people. By this action, thousands of persons were relieved of possible prosecution for violations of the Military Selective Service Act.

In addition, I directed the Secretary of Defense to develop an administrative program to deal with those persons who received less than honorable discharges during the Vietnam war era. Under the Special Discharge Review Program developed by the Department of Defense, with the advice of the Joint Chiefs of Staff, 28,000 applicants have been reviewed to date and 16,000 persons have had their discharges upgraded. The Review Program has freed many young persons from the social and employment hardships that resulted from their less than honorable discharges.

This Special Discharge Review Program gave Congress the opportunity, by passing S. 1307 to evaluate the treatment given to all veterans with less than honorable discharges, regardless of the era in which they served. Through S.1307 the Congress has provided all veterans with less than honorable discharges the opportunity to apply for an upgraded status.

Nothing in this bill detracts from the impact of the Presidential Pardon or the Special Discharge Review Program in helping to wipe the records of these veterans clean.

S. 1307 accomplishes many positive benefits for veterans:

-- For the first time, all veterans, regardless of the time of their service, will have their applications for discharge upgrading and for benefit eligibility determined by uniform nationwide standards. Thus, pre-Vietnam era, post-Vietnam era and Vietnam era veterans will all be judged by the same nationwide standards.

-- Veterans with less than honorable discharges, as well as those upgraded under the Special Discharge Review Program, will automatically be eligible for VA health care benefits for their service-incurred injuries.

-- The bill provides an opportunity for veterans upgraded under the Special Discharge Review Program to receive veterans benefits.

(MORE)

My hope is that the Department of Defense and the Veterans Administration will be forthcoming and compassionate in upgrading veterans and extending benefit eligibility to them. Each of these is a clear step forward in the nation's treatment of many of those who served in the armed forces.

[This act establishes procedures for granting relief from administrative discharges in the future. Nothing we are doing, however, should create an impression of weakness in the resolve of the Government to insure that discipline is maintained in our armed forces.]

While the Special Discharge Review Program would have automatically provided benefit eligibility to those whose discharges have been upgraded, without the cumbersome procedures provided in S. 1307, I am pleased that Congress has deleted the amendment by Congressman Beard to the Department of Housing and Urban Development Appropriations Bill. That amendment would have totally denied veterans benefits to those whose status was upgraded under the Special Discharge Review Program.

Despite the benefits of the Act, there are some provisions of S.1307 which are troubling and which I will attempt to alleviate by submitting legislation next year.

While the primary purpose of the Special Discharge Review Program was to eliminate the stigma attached to persons with less than honorable discharges, another tangential result was to provide VA benefit eligibility to those upgraded under the Program. Under S. 1307, however, those upgraded under the Program will be required to have their benefit eligibility reevaluated by the Discharge Review Board, whether or not they have sought or plan to seek VA benefits.

In addition, I am also concerned that the bill completely bars benefit eligibility to those upgraded under the program whose records indicate they were absent without official leave for more than 180 consecutive days. This adverse impact of this provision is tempered by the fact that the upgraded status of such veterans would not be affected by this provision; the VA Administrator would be permitted to waive the bar if there were mitigating circumstances for the veteran's absence from service; and Defense Department records indicate that there are very few upgraded veterans actually in this category.

But the fact that this 180 day bar applies only to those whose upgraded discharges resulted from the Special Discharge Review Program raises serious equal protection problems. The Justice Department believes this denial of equal treatment to certain upgraded veterans is probably unconstitutional. I am asking the Attorney General's advice on the way in which this provision should be administered in light of the Justice Department's opinion.

On balance, I believe this bill will help veterans, because it expands the number of veterans who are eligible for benefits, while preserving the opportunity for those whose status has been upgraded under the Special Discharge Review Program to qualify for benefits.

###

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My hope is that the Department of Defense and the Veterans Administration will be forthcoming and compassionate in upgrading veterans and extending benefit eligibility to them. Each of these is a clear step forward in the nation's treatment of many of those who served in the armed forces.

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###

THE VICE PRESIDENT
WASHINGTON

October 7, 1977

MEMORANDUM FOR: THE PRESIDENT

FROM: THE VICE PRESIDENT

SUBJECT: DECISION ON VETERANS DISCHARGE AMENDMENTS

I have read the materials on this issue and would recommend that you sign the bill, with a brief statement indicating that further legislative consideration may be needed.

Analysis of the Issue

As I understand it, the primary goal of your amnesty program and the clemency program adopted by President Ford, was not to automatically provide benefits based on service that may never have been performed, but to heal the wounds of the war, by removing the stigma attached to people who in good conscience felt they could not carry out their duties as members of the Armed Forces. The overwhelming support in Congress for the bill would seem to show agreement with this point of view.

There are nonetheless serious concerns about the bill, primarily that it would require a new determination, following upgrading of an individual's discharge, of whether he deserved veterans benefits -- irrespective of whether those benefits were ever sought. This might be seen as a new form of stigma and as a retreat from the program you previously announced. There are also objections based on administrative complexity and cost.

Political Analysis

The political points have been made in the paper you have already reviewed. Despite the serious potential problems with the House leadership and Senator Cranston, you might want to consider a veto if you thought that it could be sustained and would lead to either no bill or a better proposal. I have made a quick check and I share Frank's

doubts that a veto could be sustained. Even if it could, I think there is a possibility that the result might be Congressional passage of something closer to the Beard amendment, attached to a bill that you might have greater difficulty in vetoing. Moreover, I do not think this is the kind of issue you would want to have for your first veto, and I believe a veto of this bill could rupture the close relationship you and the Speaker have worked so hard to establish.

Possible Statement

To deal with the problem on the merits, and to soften, if possible, the reaction from amnesty groups, you might want to consider a statement which would make a few brief points:

1) that you have reservations about the bill but are impressed by the broad based Congressional support;

2) that your reservations are based on the possibility of creating a new form of stigma contrary to the spirit of forgiveness and reconciliation, and also on the potential administrative complexity and cost;

3) that if it appears that these problems cannot be overcome by sensitive and careful management, that you may ask the Congress to reconsider and revise the law.

- Benefits could not be provided to veterans who were A.W.O.L. for at least 180 consecutive days, unless the V.A. Administrator determined there were compelling reasons for the granting of benefits; eligibility for upgrading would not be affected by this prohibition.

- Veterans whose less than honorable discharges have not been upgraded would nonetheless be eligible for VA health care benefits needed to treat service-incurred injuries.

Although several of the above provisions are not directly related to your Discharge Review Program, it is clear that this bill's most significant provision -- the requirement that those upgraded under the Program have their benefit eligibility determined by a review board -- runs counter to the intention and operation of your Program. Under it, those whose discharges were upgraded automatically became eligible for V.A. benefits; a separate review board eligibility determination was not needed.

Despite that major, and well-known, difference, Congress apparently passed this bill with some expectation that you would sign it. The sequence of events that led to that expectation is as follows:

- Shortly after DOD announced the Special Discharge Review Program, Congressman Beard proposed, and the House passed (273-176), an amendment to the HUD appropriations bill completely prohibiting those receiving upgraded discharges from receiving any VA benefits.

- To prevent the Senate from passing the Beard amendment, Senators Cranston and Thurmond proposed a compromise requiring those who were upgraded and who sought VA benefits to have their eligibility determined by the existing DOD review boards. In addition, those who served prior to the Vietnam era were made eligible for upgrading. The Senate passed this compromise 87-2.

° We were then informed that the Senate would pass the Beard amendment overwhelmingly unless you indicated a willingness to sign the Cranston-Thurmond compromise. We were also informed that such indication would lead the House conferees to delete the Beard amendment from the HUD appropriations bill. Based on that information, you agreed not to veto the Cranston-Thurmond compromise in its present form. The Senate then passed the HUD appropriations without the Beard amendment.

° The House then passed, 321-75, a more restrictive version of Cranston-Thurmond and began what was technically an unofficial conference with the Senate. The House conferees insisted on the following changes to the original Cranston-Thurmond compromise, which were agreed to by the Senate conferees and which were then passed by both Houses by voice vote:

-- requiring that all of those upgraded under your Program have their eligibility determined by the review boards (the Cranston-Thurmond compromise required a determination only for those who were upgraded and sought benefits);

-- imposing the 180-day A.W.O.L. ban on benefit eligibility;

-- including post-Vietnam era veterans in the category of those eligible for upgrading;

-- permitting health care benefits to all veterans for service-incurred disabilities.

° After your last press conference, you answered a question about the revised compromise by saying that you had not seen it and therefore could not yet say that you would sign it. Since the House leadership, and the conferees, regarded the revised compromise as within the spirit of the original Cranston-Thurmond compromise, they were apparently surprised to learn that you were not

committed to sign the revised compromise. The Speaker's office therefore asked the Congressional Liaison office your position; the response from them was that you would sign the bill, unless there had been significant changes from the original compromise, but that an analysis of the bill had not been completed.

° The Speaker's office took that response to mean that you would sign the bill, because it believed that no changes of consequence had been made to the original compromise. That word was then conveyed to other House leaders and to Congressman Mahon, who on this understanding agreed to delete the Beard amendment from the HUD appropriations bill, which you have already signed.

VOTES IN CONGRESS

Senate - voice vote (Cranston-Thurmond passed 87-2)

House - voice vote (modified Cranston-Thurmond passed 321-75)

ARGUMENTS FOR SIGNING

° The House leadership, particularly the Speaker and Congressman Mahon, believe they had a commitment, based on the Speaker's conversation with the Congressional Liaison office, that you would sign the bill. Based on that commitment, the Beard amendment was deleted. While it is clear from the Administration's perspective that no actual commitment was intentionally or knowingly given, that perspective is not shared by the House. The Speaker and Congressman Mahon have indicated several times in the last few days that the Administration's credibility is at stake; a veto would be regarded by them as a reneging on what they consider to be an Administration commitment.

° The Congress feels strongly that upgraded veterans should not automatically be granted veterans benefits. Voting against the automatic granting of such benefits is apparently a very easy vote for most Members. It therefore seems unlikely that a veto could be sustained. It would be widely regarded as an indication of the Administration's weakness on Capitol Hill if its first veto was overridden -- at the very time you need so much strength for the energy fight.

° Not only should your first veto be sustained, if at all possible, but it should be on an issue where the signals given to the Congress and the public were unmistakably clear throughout the legislative process. In addition, your first veto should probably be on an issue that has reasonably wide public appeal and understanding -- such as saving Congress from overspending. This issue will no doubt be widely portrayed by many Members of Congress as an effort by the Administration to ensure automatic veterans benefits to deserters.

° The veterans groups have been closely following this bill and obviously feel it should be signed. Many of these groups, particularly the VFW, believe your Administration is decidedly anti-veteran. While signing one bill will not change that attitude overnight, it may help warm relations with some veterans groups, like the American Legion and Disabled Veterans. In any event, the converse is certainly a likely outcome -- a veto would further chill relations.

° The bill is not different in significant respects from the original Cranston-Thurmond compromise. While that compromise was reluctantly accepted, the present bill should be judged by comparing it with Cranston-Thurmond and not with an ideal bill. The changes from Cranston-Thurmond can be seen as follows:

-- Requirement that all upgraded veterans have their benefit eligibility determined by the review boards. While the original compromise would not have required review board determination of benefit eligibility for those who were upgraded but did not seek benefits, the present requirement of review even for those not seeking benefits will not unduly disrupt your Program. There are 8,000 upgraded veterans (those whose discharges were upgraded to general or honorable) whose eligibility would have to be determined. The determination can be made relatively quickly, for the files are still current and are readily accessible in a central place (St. Louis); additionally, there would be no

difficulty locating the veterans involved. If the benefit determinations were not made until an upgraded veteran applied for benefits, the determination might not be made for several years, when files and other necessary information might be less accessible. Finally, a veteran determined ineligible for benefits under this review would not be further penalized; the determinations would be made known only to the VA, not to any employers.

-- 180 day AWOL bar -- While this is the most serious departure from Cranston-Thurmond, there are a number of reasons why a veto should not be based on it. First, there is an exception for those who were absent for that length of time but have compelling reasons for their absence; the VA Administrator will determine what "compelling reasons are," and he has said he will construe the exception very liberally. (DOD is concerned that this determination will be made by VA; DOD believes it should resolve all questions relating to deserters.)

Second, the 180 day rule would not apply to determinations that might be made by the DOD's Board for Correction of Military Records, which is another vehicle (in addition to the review boards) which can issue upgrades. Third, there are very few upgraded veterans actually affected by this provision; the officer in charge of the review boards estimates that no more than 1% - 3% of those upgraded under your Program would be affected.

-- Inclusion of post-Vietnam era veterans in upgrade program. Cranston-Thurmond had included in its coverage, at the insistence of the veterans groups, veterans who served prior to the Vietnam era; the present bill adds to that expansion of the upgrade program by including post-Vietnam era veterans. The purpose of the change was simply to make certain that one upgrade rule would apply to all veterans.

-- Health care benefits for all veterans for service-incurred injuries. Given Congress' general attitude to those receiving less than honorable discharges, it is surprising that this provision apparently has such wide support. It is difficult to oppose, for it is perceived as a compassionate gesture. No additional costs are estimated to be incurred by VA, because of its "space available" policy to those eligible for its health care benefits.

ARGUMENTS FOR VETOING

° The bill is designed principally to overcome one of the purposes of your Special Discharge Review Program -- ensuring those who registered and were upgraded that one of the effects of the upgrade would be V.A. benefit eligibility. In that respect, the bill must be regarded as a partial repudiation of one of your programs. A veto would indicate the strength of your commitment to the Program and your unwillingness to allow Congress to change that Program in any respect.

° The bill will create a bureaucratic logjam, for the extension of upgrade eligibility to all veterans (the statute of limitations was 12 years) makes about 800,000 veterans eligible for upgrade. Even if only a tenth of those apply, DOD may be forced to spend a considerable amount of money seeking their records and processing their claims. (This general application of upgrade eligibility was, however, part of Cranston-Thurmond amendment.)

° Many pro-amnesty groups, and a number of liberal Members of Congress, strongly support your Program, and believe you have an obligation to those who entered it to do whatever you can to preserve the Program.

° The press is watching this issue closely; while no action you could take will escape press criticism, signing the bill will no doubt unleash a series of stories criticizing your refusal to stand tough with Congress.

° While it now appears that an override would be likely, it might be possible to sustain a veto in

the Senate (which would vote first) if the Administration was willing to extend enough time, energy and Presidential involvment and a Floor leader could be found. (Cranston will vote for an override.)

° You have not personally made a commitment to sign the bill. It might be possible to explain the misunderstandings to the House leadership and indicate that you would be willing to accept only the Cranston-Thurmond compromise. You might indicate a willingness to work for passage this session to replace the vetoed bill.

° The bill should be examined on its merits, not on the extent of its deviation from Cranston-Thurmond. The commitment was made on the understanding that the Administration would go no further in accepting Congressionally imposed changes in its Program. When the bill is viewed from that perspective, it clearly merits a veto, for the bill imposes a major change in your Program. While Senator Cranston supports the current bill, and regards the changes from Cranston-Thurmond as minor, he understands that the Administration's commitment was only to Cranston-Thurmond and does not therefore feel any Administration commitment still exists to him.

° The Justice Department believes one provision of the bill is possibly unconstitutional. In its view, equal protection is denied because the 180 day bar applies only to veterans upgraded through your Program; it does not apply to those who were upgraded outside of the Program or will be upgraded under this bill.

AGENCY AND STAFF RECOMMENDATIONS

Secretary Brown believes the bill effectively negates important features of your Program and would impose a vastly expanded discharge review program of long duration and administrative complexity. For those reasons, he recommends a veto, if you feel the issue involved can be separated from others involved in the Administration's Congressional relations. If not, he recommends letting the bill become law without your signature and issuing a statement critical of

the bill. He would like to speak with you before a final decision is made.

OMB believes the bill deviates substantially from Cranston-Thurmond by requiring a review of each upgraded veteran and imposing the 180 day A.W.O.L. bar. For that reason, and because the whole concept of Cranston-Thurmond and the present bill is believed to run counter to the objectives of your Program, OMB recommends a veto. Jim McIntyre has indicated to you in a separate memorandum that while he agrees with the OMB position on programatic grounds, he believes the apparent commitments made to the Speaker outweigh the bill's deficiencies.

Max Cleland believes the bill is a significant improvement over the Beard amendment because it does not indiscriminately scuttle the effects of the Program, insofar as VA benefits are concerned. For that reason, and because of the very strong Congressional support he has perceived for the bill, he recommends that you sign it.

Frank Moore and I recommend that you sign the bill. Bob Lipshutz was out of town today and will send you a memo reply Friday morning.

OPTIONS AND RECOMMENDATIONS

I think the following 4 options are available:

(1) Sign with no statement. This recognizes the strength of the above-described arguments for signing the bill, but does not criticize Congress for the bill's many objectionable parts -- or force you to indicate exactly why you signed a bill that many believe disrupts your Program.

(2) Sign with statement critical of bill. This will indicate clearly to Congress and the public that while you believe there are serious deficiencies in this bill, other possible Congressional initiatives could be more punitive. One of the deficiencies you could emphasize is the possible unconstitutionality of the 180 day bar. Additionally, you could also indicate that you will have legislation introduced soon to correct those deficiencies. This will satisfy Congress and particularly the Speaker, who really does not care about the content of a critical statement as

long as the bill is signed. The success of possible Administration efforts to eliminate the provisions which differ from Cranston-Thurmond is uncertain at this point, but Frank Moore believes that some modifications (particularly with respect to the 180 day bar) are possible and would be helped by a statement from you.

I recommend this option. While I believe the bill contains parts which seriously change your Program, I do not believe those parts differ appreciably from Cranston-Thurmond, which the Administration was willing to support. More importantly, though, I believe the Administration is believed by the House leadership to have a commitment to sign the bill. While that commitment was not knowingly given, the House leadership will be extremely upset and embarrassed by a veto. I do not think the changes this bill makes to Cranston-Thurmond warrant so impairing relations with the leadership, especially at a time when its help is needed on so many major matters. Finally, the leadership would be upset for little apparent gain, for the bill would likely become law through an override.

(3) Allow to become law without your signature. I recognize that you are disinclined to ever use this method of approving a bill. As you know, its advantage is that it shows your dismay with a bill without requiring a veto or risking an override loss; its disadvantage is that it presents an indecisive appearance. If you choose this option, a critical statement could still be issued.

(4) Veto. This recognizes the strength of the above-described arguments for vetoing the bill. If you choose this option, a veto message indicating your objections should be issued.

DECISION

_____ Sign S. 1307 with no statement

_____ Sign S. 1307 with critical statement
(V.A., Jim McIntyre (personally), Frank Moore and I recommend)

_____ Allow S. 1307 to become law without signature, and issue critical statement

_____ Veto S. 1307
(DOD and OMB recommend)

THE WHITE HOUSE

WASHINGTON

October 5, 1977

MEMORANDUM FOR THE PRESIDENT

FROM: FRANK MOORE F.M.

SUBJECT: S. 1307 -- Veterans Discharge Review Amendments

The Congressional Liaison staff recommends that you sign, or -- contrary to your traditional pattern -- permit to become law without your signature, S. 1307. We further recommend that the accompanying statement be very brief and that it make clear that S. 1307 is acceptable only because the alternative (the so-called Beard amendment) was totally unacceptable.

Quite frankly, our recommendation that S. 1307 be signed is based on two critical political factors rather than on the merits of the legislation itself. First of all, the House Leadership believes it has a firm commitment from us to sign the bill. The Leadership and Chairman Mahon agreed to separate the Beard amendment from the HUD appropriations bill only on the condition that you sign S. 1307. We reluctantly agreed to that condition. To renege on our commitment would cause serious problems with the Speaker.

Secondly, Alan Cranston was a prime mover of S. 1307 in the Senate. As you know, Cranston has been especially helpful to us on this issue and many, many others.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OCT 6 - 1977

PERSONAL

MEMORANDUM FOR THE PRESIDENT

FROM: Jim McIntyre Jim McIntyre

SUBJECT: The Discharge Review Program (S. 1307)

We recommended disapproval of this bill in our memo to you, but I understand now that commitments were made to the House Leadership that you would sign it.

In view of this, my judgment is that you should not jeopardize your relationship with the Speaker by vetoing the bill.

However, the bill remains bad programmatically. If we have to back off, I would suggest that we do so only after you speak with the Speaker so that (1) he is aware of how important this is to you, and (2) we can obtain his commitment to help us change the worst features of the bill.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OCT 4 1977

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 1307 - Veterans discharge review amendments
Sponsor - Sen. Thurmond (R) South Carolina

Last Day for Action

October 8, 1977 - Saturday

Purpose

Denies entitlement to Veterans Administration (VA) benefits to those whose discharges are upgraded under the temporary discharge review standards applicable to Vietnam era veterans.

Agency Recommendations

Office of Management and Budget	Disapproval (Veto message attached)
Department of Defense	Disapproval (Veto message attached)
Veterans Administration	Approval
Department of Justice	Defers to VA and DOD

Discussion

S. 1307 provides that no VA benefits may be awarded to a veteran whose discharge has been upgraded under two special discharge review programs unless the upgrading would have been approved using the regular discharge review standards. The two programs are the one approved by President Ford on January 19, 1977, and the Special Discharge Review Program (SDRP) you began on April 5, 1977. The bill was passed by a 321-75 vote in the House and by a vote of 87-2 in the Senate.

Background. Under current law, any veteran with a "less than honorable" discharge may apply to have the discharge reviewed and upgraded by a discharge review board. On March 28, 1977, the Secretary of Defense announced that you had approved a special program for the review of certain discharges received by military personnel during the Vietnam era (August 4, 1964-March 23, 1973).

The Special Discharge Review Program requires review boards to automatically upgrade the discharges of Vietnam era veterans if certain criteria are met. Normal procedures require the review boards to "consider" such criteria in determining whether a discharge should be upgraded but do not "require" that the discharge be upgraded.

The program approved by former President Ford on January 19, 1977, ordered that other than honorable discharges of veterans who were wounded in combat in Vietnam or who received decorations for valor in combat, and who applied for a clemency discharge under the Clemency Program announced on September 16, 1974, be recharacterized as honorable in the absence of a compelling reason to the contrary.

Following implementation of the SDRP, legislation was introduced and considered by the Veterans Affairs Committees in both houses of Congress to prohibit VA from providing veterans benefits to Vietnam era veterans whose undesirable discharges were upgraded as a result of the program. The House, in addition, by a vote of 273-137, added an amendment sponsored by Rep. Robin Beard (R-Tenn.) to the HUD-Independent Agencies Appropriation Act, 1978, H.R. 7554, which would have prohibited the use of any 1978 VA funds for processing claims or paying benefits to any veteran whose discharge was upgraded under SDRP, even though the veteran might have been entitled to an upgrading under the regular standards. The Beard amendment was dropped from the appropriations bill only after S. 1307 became enrolled.

The Administration strongly opposed these bills on the grounds they were inconsistent with your objective of extending compassion and forgiveness to Vietnam era veterans.

Provisions. Under S. 1307, Vietnam era veterans would continue to receive the advantages that an upgraded discharge conveys in seeking employment. However, by denying veterans who receive an upgraded discharge access to those veterans' benefits that other veterans with the same discharge enjoy, S. 1307 would negate a vital part of the SDRP.

The major provisions of S. 1307 would:

-- create an entitlement to VA benefits for those veterans with an upgraded discharge only if the upgrading was based on standards generally applicable to all persons administratively discharged from active duty service. Such standards would have to be consistent with the criteria "historically" used for determining honorable service. In no case could these standards include criteria for automatically upgrading discharges, such as those in the SDRP.

-- preclude the granting of VA benefits on the basis of upgradings already approved under President Ford's Clemency Program or your Special Discharge Review Program, unless the discharge would have been upgraded under generally applicable standards. Veterans in this category would have an opportunity to have such a determination made and would not be required to pay back any benefits already received if the "second" determination were adverse to the veteran.

-- create an absolute bar to benefits in the case of veterans who were absent without authority from active duty for a continuous period of 180 days or more, unless the absence was determined to be for compelling reasons.

-- permit all veterans, not just Vietnam era veterans, to apply for an upgraded discharge.

The one exception in S. 1307 to the prohibition of VA benefits for recipients of upgraded discharges is a provision authorizing medical treatment for service-connected disabilities regardless of the character of the administrative discharge, unless such treatment is already barred under current law.

S. 1307 also contains a number of procedural and technical provisions which are addressed in the attached DOD and VA views letters.

The cost implications of S. 1307 are not known. VA states: "While there might be some cost savings resulting from denial or termination of benefits in some cases, the extension of opportunity for review of disqualifying discharges now precluded from review by the statutes of limitations could result in eligibility for Veterans Administration benefits to such persons." DOD estimates that the bill could result in administrative and benefit costs in excess of $100 million for the first year as the result of opening up eligibility for all veterans (and their heirs) who received less than honorable discharges.

Recommendations

The VA Administrator acknowledges that S. 1307 would "effectively negate the President's special discharge review program" but recommends approval because "of very strong congressional support and because this bill (unlike the Beard amendment to H.R. 7554) does not indiscriminately scuttle the effect of SDRP insofar as Veterans Administration benefits are concerned." VA indicates that it believes Congress has made considerable efforts to refine S. 1307 "in order that it be fair, equitable and nondiscriminatory with respect to persons of service during periods other than the Vietnam era."

In support of its recommendation for veto, DOD argues that the bill would create a new, extremely complex program which, due to its rigid non-judgmental criteria for evaluation of service, would have a "major adverse impact" on the morale and effectiveness of service personnel. The Department also points out that S. 1307 would create a complex system of five levels of administrative discharge.

Even if S. 1307 were to become law, veterans with upgraded discharges would still be able to avoid the social and economic sanctions that so often result from a less than honorable discharge. Nevertheless, we believe S. 1307 is so clearly inconsistent with your objective of binding up the divisions of the Vietnam War that it warrants your disapproval. By denying veterans with upgraded discharges access to those benefits that other veterans with the same discharges enjoy, the bill would stop short of extending the forgiveness and compassion that your SDRP sought.

We understand that some members of Congress are under the impression that you have agreed to the provisions in S. 1307 and that you intend to sign the bill, notwithstanding the

contrary signals that Administration officials consistently sent in their testimony and reports. The bill differs significantly from that which passed the Senate, to which you agreed. First, it requires a new review of each case upgraded on the Discharge Review Program, regardless of application for VA benefits. Second, it bars from VA benefits anyone absent without leave for 180 days or more unless compelling reasons for the absence can be shown.

We also understand that the perception of likely approval of S. 1307 resulted in the House decision on September 28, 1977, to recede from the Beard amendment in the HUD-Independent Offices Appropriation Act, which has now cleared the Congress.

We believe the principles involved in S.1307 is so important and the provisions of the bill are so undesirable in terms of your objectives for the Vietnam era veteran that the bill should be vetoed. We have attached for your consideration a draft veto message.

Jim McIntyre

James T. McIntyre, Jr.
Acting Director

Enclosures

TO THE SENATE

I am returning S. 1307 without my approval.

S. 1307 would deny entitlement to Veterans Administration benefits to those veterans whose discharges have been upgraded under the Special Discharge Review Program that I authorized in March, as well as to veterans who received upgraded discharges under President Ford's Clemency Program. The bill thus would create an inferior classification of discharge for those Vietnam era veterans participating in these two programs, thereby nullifying their humanitarian purposes.

My objective in authorizing the Special Discharge Review Program was to extend compassion and forgiveness to deserving Vietnam era veterans and to bind up the divisions resulting from that conflict. S. 1307 would prevent this by withdrawing from Vietnam era veterans with upgraded discharges those VA benefits available to veterans of all other periods of service with similar or equivalent discharges.

I understand the concerns expressed by those who supported this bill with respect to the fair and equitable treatment of all veterans. I do not believe, however, that fairness can be achieved by denying the Vietnam era veteran full opportunity to be forgiven for errors of conduct which may have occurred in a divisive war during a period of deep social turmoil.

Accordingly, I cannot in good conscience agree to enactment of S. 1307.

THE WHITE HOUSE

September 30, 1977

THE WHITE HOUSE
WASHINGTON

Remarks from
Vice President
attached

THE WHITE HOUSE
WASHINGTON

10/7/77

Mr. President:

Attached is Bob Lipshutz' comment on S. 1307.

A copy has been given to the Vice President and to Stu.

Rick

THE WHITE HOUSE

WASHINGTON

October 7, 1977

MEMORANDUM FOR THE PRESIDENT

FROM: ROBERT LIPSHUTZ
MARGARET McKENNA

SUBJECT: Enrolled Bill S-1307, Veterans Discharge Amendment

We recommend that Frank Moore contact the Speaker and do everything possible to pursuade him that the agreement with the Speaker was based on the information that there were no significant changes in the final version of the bill. There were two significant changes from the Senate version, one of which, the 180-day bar is probably unconstitutional. If the Speaker can be persuaded and there would not be significant damage to our whole legislative program, we recommend that you veto the bill.

If a veto does not seem feasible, we recommend that you sign the bill with a statement critical of its content, also pointing out that 180-day provision is probably unconstitutional. The Justice Department analyzed this provision yesterday and communicated orally their analysis. We expect a written opinion this morning which will state that this provision of the bill is probably unconstitutional.

Last Day for Action
Saturday, October 8, 1977

THE WHITE HOUSE

WASHINGTON

October 6, 1977

Fritz - read & comment
I

MEMORANDUM FOR: THE PRESIDENT

FROM: STU EIZENSTAT Stu

SUBJECT: Enrolled Bill S. 1307
Veterans Discharge Amendments

THE BILL

The bill establishes the following V.A. benefit eligibility standards for veterans initially granted a less than honorable discharge:

- Those whose discharges were upgraded to "general" or "honorable" under your Special Discharge Review Program (which expired on October 4) or President Ford's Clemency Program would be required to have their benefit eligibility determined by the existing Department of Defense discharge review boards.

- The boards' determinations of eligibility would have to be based on uniform standards. (Presently, each board's determinations are based on its own case-by-case precedents; published, nationwide standards have not been developed.)

- Those whose less than honorable discharges pre- or post-date the Vietnam War era (to which your program and President Ford's were limited) would be eligible for upgrading, and thus benefits, according to the same standards applied to Vietnam era upgrades; in addition, those who were eligible for upgrading under your program and Ford's, but did not apply, could seek upgrading under the same standards.

THE WHITE HOUSE

WASHINGTON

October 8, 1977

MEMORANDUM FOR THE PRESIDENT

FROM: STU EIZENSTAT Stu

SUBJECT: Signing Statement - S. 1307

Attached is the statement for S. 1307 which you requested that I draft.

I have drafted this giving a positive emphasis to that which has already been done and to the bill itself, while recognizing some of the negative aspects we will deal with through legislation next year.

One sentence has been added at the insistence of the Defense Department and it is noted by a bracket on Page 3 of the statement.

I reviewed this statement with the Department of Defense and the Veterans Administration, as well as with Bob Lipshutz' office. Jim Fallows has reviewed this as well. All are in agreement.

ok
J

Here is D.O.J.'s suggestion for a signing statement!

In my opinion one provision of the bill raised serious constitutional questions. The bill proports to bar certain categories of persons who obtained upgraded discharges through the Special Discharge Review Program implemented by this Administration from receiving Veterans Administration benefits. At the same time, other military veterans who had committed similar offenses, and who had their discharges upgraded ~~by the previously~~ through the previously existing Discharge Review Program would continue to receive VA benefits. I am able to preceive no rational and legitimate basis for a law which so discriminates against those who avail themselves of the Special Discharge Review Procedure. This provision of the bill, which amends 38 USC Section 3103 (a), in my view offends the equal protection concepts of the Fifth Amendment.

– Congress could not have passed anything which would have affected the upgraded discharge. It would be an Ex post facto law.

Margaret M.

Call me re: statement for the [illegible]

THE WHITE HOUSE
WASHINGTON

October 11, 1977

Frank Moore

The attached letters were returned in the President's outbox today. They are fowarded to you for delivery to the Hill.

Rick Hutcheson

cc: The Vice President
Stu Eizenstat

RE: HOSPITAL COST CONTAINMENT

THE PRESIDENT HAS SEEN.

THE WHITE HOUSE

WASHINGTON

October 10, 1977

MEMORANDUM FOR: THE PRESIDENT

FROM: STU EIZENSTAT AND FRANK MOORE S. M.

SUBJECT: Hospital Cost Containment

Secretary Califano will testify on Hospital Cost Containment before Senator Talmadge's subcommittee on Wednesday, October 12. He would like to include material in his statement which reflects your continued personal support for the Administration's cost containment proposal.

I recommend that you send the attached letter to the three health subcommittee Chairmen now working on cost containment, reaffirming your commitment, which Secretary Califano would then make public at the hearing and which our press office would then release.

I also recommend that you send personal notes to the Chairmen, attached, accompanying the letters and urging their support.

Finally, I recommend that you send a personal note, attached, to Senator Kennedy, thanking him for his completed work on cost containment.

THE WHITE HOUSE

WASHINGTON

To Chairman Herman Talmadge

One of my most important priorities is to secure strong legislation to restrain the skyrocketing increase in health care costs. As subcommittees in both the House and Senate prepare to resume their work in this area, I wish to reaffirm my strong personal commitment to the Administration's Hospital Cost Containment legislation.

Last month, HEW announced that it was required to increase the deductible for hospital coverage under Medicare from $124 to $144, reflecting rising hospital costs. These rising costs affect not only the elderly, but all Americans. Today, 95,000 Americans will enter community hospitals. By the time they leave the hospital, their care will have cost $124 million. Our people already spend more for health care than the people of any other nation -- yet the cost of that care doubles every five years. The American people simply cannot afford yearly increases in their hospital bills of 15% and more.

The Administration's Hospital Cost Containment bill will restrain this escalation in hospital costs. It will save billions of dollars -- not only in Federal and State budgets, but in the budgets of American families as well. This legislation is

important in our twin efforts to restrain inflation and improve the quality of health care for all Americans.

I deeply appreciate your leadership to this date.

Sincerely,

Jimmy Carter

The Honorable Herman E. Talmadge
Chairman
Subcommittee on Health
Committee on Finance
United States Senate
Washington, D.C. 20510

THE WHITE HOUSE

WASHINGTON

To Chairman Paul Rogers

One of my most important priorities is to secure strong legislation to restrain the skyrocketing increase in health care costs. As subcommittees in both the House and Senate prepare to resume their work in this area, I wish to reaffirm my strong personal commitment to the Administration's Hospital Cost Containment legislation.

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important in our twin efforts to restrain inflation and improve the quality of health care for all Americans.

I deeply appreciate your leadership to this date.

Sincerely,

Jimmy Carter

The Honorable Paul G. Rogers
Chairman
Subcommittee on Health
and the Environment
Committee on Interstate and
Foreign Commerce
U.S. House of Representatives
Washington, D.C. 20515

THE WHITE HOUSE

WASHINGTON

To Chairman Dan Rostenkowski

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-

important in our twin efforts to restrain inflation and improve the quality of health care for all Americans.

I deeply appreciate your leadership to this date.

Sincerely,

Jimmy

The Honorable Dan Rostenkowski
Chairman
Subcommittee on Health
Committee on Ways and Means
U.S. House of Representatives
Washington, D.C. 20515

THE WHITE HOUSE

WASHINGTON

Personal

To Chairman Paul Rogers

Joe Califano will make public a copy of the enclosed letter tomorrow at the Finance Subcommittee hearings on hospital cost containment.

I deeply appreciate the work you have done on cost containment, and hope we can have a bill soon.

Sincerely,

Jimmy Carter

The Honorable Paul G. Rogers
Chairman
Subcommittee on Health
and the Environment
Committee on Interstate and
Foreign Commerce
U.S. House of Representatives
Washington, D.C. 20515

THE WHITE HOUSE

WASHINGTON

Personal

To Chairman Herman Talmadge

I am enclosing a letter on hospital cost containment to Chairman Rogers, Chairman Rostenkowski, and yourself which Joe Califano will make public as part of his testimony on Wednesday morning. As you resume your hearings on rising hospital costs, I want to reaffirm my strong personal commitment to solving this problem. Your leadership, and the farsighted work of your subcommittee, are in good measure responsible for the widespread and growing recognition that health care costs must be restrained. I strongly urge you to support the Administration's short-term approach to Hospital Cost Containment, and look forward to working with you on longer-term solutions. I offer my good offices to assist in any way I can during your important deliberations.

Sincerely,

Jimmy

The Honorable Herman E. Talmadge
Chairman
Subcommittee on Health
Committee on Finance
United States Senate
Washington, D.C. 20510

THE WHITE HOUSE

WASHINGTON

To Chairman Edward Kennedy

Thank you for your prompt work on hospital cost containment..

I am enclosing a copy of a letter on cost containment that I am sending to the other three health subcommittee Chairmen.

Sincerely,

Jimmy

The Honorable Edward M. Kennedy
Chairman
Subcommittee on Health
and Scientific Research
Committee on Human Resources
United States Senate
Washington, D.C. 20510

THE WHITE HOUSE

WASHINGTON

To Chairman Dan Rostenkowski

Joe Califano will make public a copy of the enclosed letter tomorrow at the Finance Subcommittee hearings on hospital cost containment.

I deeply appreciate the work you have done on cost containment, and hope we can have a bill soon.

Sincerely,

Jimmy

The Honorable Dan Rostenkowski
Chairman
Subcommittee on Health
Committee on Ways and Means
U.S. House of Representatives
Washington, D.C. 20515